No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA,
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME IV

PAGES 1551-2080

LODGED
APR - 4 1914
F. D. MONCKTON
CLE

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME IV

PAGES 1551-2080

[STATEMENT OF THE EVIDENCE]

And afterwards, on the .... day of December, 1913, and within the time allowed by orders of Court the Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage (individually and as trustee), Union Trust Company (individually and as trustee), defendants and appellants herein, filed their and each of their STATEMENT OF THE EVIDENCE taken, reported, filed and considered in said cause in words and figures as follows, to-wit:

Case No. 3340.

District Court of the United States
For the District of Oregon

United States of America,

Complainant,

vs.

Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage (individually and as trustee), Union Trust Company (individually and as trustee), and others,

Defendants.

Come now the Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage

(individually and as trustee), and Union Trust Company (individually and as trustee), defendants and appellants herein, and present this their and each of their statement of the evidence taken, reported, filed and considered in said cause.

WHEREUPON, It is certified that on the 3d day of January, 1913, the complainant and the said defendants-appellants made and filed in said cause, as a part of the evidence therein, a "Stipulation as to the Facts" in words and figures as follows, to-wit:

[STIPULATION AS TO THE FACTS]

[TITLE]

It is stipulated and agreed by and between the undersigned, that the following is a true and correct statement of the particular facts hereinafter set forth, subject to valid objections for irrelevancy or immateriality only; except in the particular instances where objections for incompetency also are herein expressly made and taken; all objections for irrelevancy and immateriality not herein expressly taken, shall be served and filed within twenty days after the filing of this stipulation with the Clerk of the above mentioned Court.

All parties hereto reserve the right to introduce further and additional evidence, within due time.

SUBDIVISION I.

Subdivision I of complainant's Bill of Complaint

(hereinafter referred to as "the Bill") correctly states, on pages 3 and 4 thereof, the citizenship and place of residence of each of the defendants; *excepting* that the defendant Stephen T. Gage is, and at the time of the filing of the Bill was, a citizen and resident of the City of Oakland, in Alameda County, California.

SUBDIVISION II.

ITEM 1. On July 25th, 1866, Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon."; which act was approved and became operative on July 25th, 1866.

ITEM 2. The copy of said Act, set forth on pages 5 to 10, inclusive, of the Bill, is a correct copy thereof.

ITEM 3. The said Act of July 25th 1866 was amended by an Act of Congress approved June 25th 1868, entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon.' "

ITEM 4. The copy of said amendatory Act of June 25th 1868, set forth on page 10 of the Bill, is a correct copy thereof.

SUBDIVISION III.

ITEM 1. The document hereto attached, marked "Ex-

hibit No. 1 to Stipulation." is a correct copy of the original Articles of ncorporation of the Oregon Central Railroad Company (of Portland).

ITEM 2. The said original document was presented to the said Secretary of State on October 6th 1866 by Joseph Gaston, who requested the said Secretary to file the said document and permit him (Gaston) to immediately withdraw it for exhibition to the Legislature of Oregon, then in session; whereupon the Secretary of State did write with a lead pencil the date, "October 6th 1866", on the back of the said document or on an envelope containing the same, and the said Gaston immediately departed with the said document and envelope in his (Gaston's) possession, and it was not returned to the said Secretary of State's office until November 21st 1866. At the time said document was presented to said Secretary of State as aforesaid no certificate or certificates of acknowledgment were appended thereto, and the only signatures thereto were those of J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. H. Chenoweth, Joel Palmer and H. W. Corbett. At the time said document was returned to the said Secretary of State's office on November 21st 1866, as aforesaid, it was in the form set forth in said "Exhibit No. 1 to Stipulation."

ITEM 3. The said Oregon Central Railroad Company (of Portland) projected its railroad line from the City of Portland in a westerly direction to the village

of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the *westerly* side of the Willamette River; from which circumstances the said Company became known as (and will be hereinafter designated and referred to as) the "West Side Company", and its railroad line became known as the "West Side Line."

ITEM 4. On October 10th 1866, the Legislature of the State of Oregon adopted, and the Governor of said State approved, the Joint Resolution a correct copy of which is set forth on pages 11 and 12 of the Bill.

ITEM 5. The West Side Company, assuming itself to have been lawfully designated therefor, on May 25th 1867, through its Board of Directors, adopted a Resolution assenting to the said Act of Congress approved July 25th 1866, and on July 6th 1867 filed a certified copy of the said Resolution in the office of the Secretary of Interior, together with a certified copy of its Articles of Incorporation and a certified copy of the said Joint Resolution of the Legislature of the State of Oregon; and on or about August 20th 1868, the West Side Company filed in the Department of Interior a map of survey of its said projected line of railroad, a correct copy of which, on a reduced scale, is hereto attached, marked "Exhibit No. 2 to Stipulation."

ITEM 6. The document hereto attached, marked "Exhibit No. 3 to Stipulation.", is a correct copy of the original Articles of Incorporation of the Oregon Central Railroad Company (of Salem), filed in the office

of the Secretary of State of the State of Oregon on April 22nd 1867; and on or about the last-mentioned date the persons whose names were subscribed to the said Articles of Incorporation, contending that the West Side Company was never lawfully incorporated or organized and designing to secure the grants, franchises and other benefits of the said Act of Congress approved July 25th 1866, caused proceedings to be taken which were intended to organize, under the general incorporation laws of the State of Oregon, the Oregon Central Railroad Company (of Salem) named in the Articles of Incorporation filed, as aforesaid, on April 22nd 1867.

ITEM 7. The last-mentioned Oregon Central Railroad Company (of Salem) projected its railroad line on the *easterly* side of the Willamette River from which circumstance the said Company became known as (and will be hereinafter designated and referred to as) the "East Side Company", and its railroad line became known as the "East Side Line".

ITEM 8. The East Side Company, in furtherance of its aforesaid design, procured the Legislature of the State of Oregon to adopt and the Governor of said State to approve, on October 20th 1868, the Joint Resolution a correct copy of which is set forth on pages 13 and 14 of the Bill.

ITEM 9. A controversy arose between the West Side Company and the East Side Company as to which of the said Companies was entitled to the grants, fran-

chises and other benefits of the said Act of Congress approved July 25th 1866, which controversy, continued until about January 1870.

ITEM 10. On April 10th 1869, Congress passed an Act entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California to Portland, in Oregon.', approved July twenty-five, eighteen hundred and sixty six."; which Act was approved on April 10th 1869.

ITEM 11. The copy of said Act, setforth on pages 15 and 16 of the Bill, is a correct copy thereof.

ITEM 12. On June 8th 1869, the East Side Company, through its Board of Directors, adopted the Resolution, a correct copy of which is setforth on pages 16 and 17 of the Bill; and on June 30th 1869 the said Company filed a certified copy of the said Resolution in the Department of Interior of the United States.

ITEM 13. On October 29th 1869, the East Side Company filed in the office of the Secretary of Interior of the United States a map of the survey and location of the first sixty miles of its projected line of railroad, extending Southerly from Portland.

ITEM 14. On or about December 24th, 1869, the East Side Company completed the construction of the first twenty miles of its said line of railroad, commencing at Portland and extending southerly therefrom; and on December 31st 1869 the said twenty-mile section

of constructed railroad was approved by Commissioners appointed pursuant to the provisions of Section 4 of the said Act of Congress of July 25th 1866, who had theretofore examined the same.

ITEM 15. "Exhibit A" to the Bill is a correct copy of the original Articles of Incorporation of the Oregon and California Railroad Company, filed in the office of the Secretary of State of the State of Oregon on March 17th 1870.

ITEM 16. The said Articles of Incorporation of the Oregon and California Railroad Company were executed and filed in triplicate, one in the office of the Secretary of State of the State of Oregon, one in the office of the County Clerk of the County of Multnomah, Oregon (being the County in which the principal office of the said company was located), and one in the office of the Secretary of the said Company, at the City of Portland, in the said County of Multnomah.

ITEM 17. On March 29th 1870, the East Side Company executed and delivered to the defendant Oregon and California Railroad Company, the instrument in writing a correct copy of which is attached to the Bill as "Exhibit B"; which instrument was recorded in the office of the County Recorder of the several Counties in which was situated any part of the lands intended to be granted by the said Act of Congress of July 25th 1866.

ITEM 18. On April 4th 1870, the defendant Oregon and California Railroad Company, through its Board of

Directors, adopted the Resolution, a correct copy of which is setforth on pages 20 and 21 of the Bill; and on April 28th 1870 filed a certified copy thereof, together with a certified copy of the said instrument in writing dated March 29th 1870 (copy attached to the Bill as "Exhibit B") in the office of the Secretary of Interior; and at all times since the date of the said instrument the defendant Oregon and California Railroad Company has assumed, and still assumes, itself to be the successor of the East Side Company in and to all the franchises, rights and property granted or intended to be granted by the said Acts of Congress.

SUBDIVISION IV.

ITEM 1. On May 4th 1870, Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon"; which Act was approved on May 4th 1870.

ITEM 2. The copy of said Act, setforth on pages 22 to 25, inclusive, of the Bill, is a correct copy thereof.

ITEM 3. By the words "Oregon Central Railroad Company", in the said Act of May 4th 1870, Congress intended to and did refer to the West Side Company.

ITEM 4. On July 2nd 1870, the West Side Company, through its Board of Directors, assented to and accepted all of the provisions of the said Act of May 4th 1870; and on July 20th 1870, filed the said assent in the office of the Secretary of Interior.

SUBDIVISION V.

ITEM 1. By the issuance and negotiation or pledge of mortgage bonds, approximately $8,000,000 was during the year 1870 procured by the defendant Oregon and California Railroad Company, and approximately $1,000,000 was during the year 1871 procured by the West Side Company in the same way; and with the funds thus procured the work of constructing the lines of railroad contemplated by the said Acts of Congress of July 25th 1866 and May 4th 1870, respectively, was prosecuted continuously until about January 1873.

ITEM 2. As hereinbefore set forth (Sub III, Item 14), the East Side Company completed the construction of the first twenty miles of its line of railroad commencing at Portland and extending southerly therefrom; and on or about March 29th 1870, executed the instrument in writing a copy of which is attached to the Bill as "Exhibit B". With the funds procured by it in 1870, as setforth in the next preceding "Item 1", the Oregon and California Railroad Company, during the years 1870, 1871 and 1872, completed the construction of the East Side railroad from the point at which the East Side Company had quit the work to a point near Roseburg, a distance of approximately 197 miles; and with the funds procured by it in 1871, as setforth in the next preceding "Item 1", the West Side Company completed construction of the railroad contemplated by the Act of Congress of May 4th 1870, from Portland to McMinnville by way of Forest Grove, a distance of approximately 47 miles.

ITEM 3. About January 1873, the said funds became exhausted, and because thereof further construction of each of said railroads was at that time discontinued, and was not resumed by the Oregon and California Railroad Company until about June 1881, and was never resumed by the West Side Company.

ITEM 4. On or about July 24th 1874, the direction and control of the financial affairs of the said two Companies were assumed, and thereafter exercised, by the then creditors thereof, organized under the name "Bondholders Committee"; which Bondholders Committee, on or about February 29th 1876, acquired all capital stock of both of said Companies and thereafter, and until on or about June 1st 1881, the affairs of said two Companies were conducted by and under the control of the said Bondholders Committee.

ITEM 5. On October 6th 1880, the West Side Company executed and delivered unto the defendant Oregon and California Railroad Company, the instrument in writing a correct copy of which is attached to the Bill as "Exhibit C"; a certified copy of which instrument was filed with the Secretary of Interior of the United States on or about October 20th 1880.

ITEM 6. At all times since the date of said instrument the defendant Oregon and California Railroad Company has assumed, and still assumes, itself to be

the successor of the West Side Company in and to all the franchises, rights and property granted or intended to be granted by the said Act of Congress approved May 4, 1870.

SUBDIVISION VI.

ITEM 1. On or about May 7th 1881, the financial affairs of the Oregon and California Railroad Company were adjusted, substantially, as follows: All the said Company's capital stock was, by action of its Board of Directors and Stockholders, canceled, and the amount of its capital stock was then established at, has ever since remained and still is of, the total par value of $19,000,000, consisting of $12,000,000 preferred stock and $7,000,000 common stock; and in payment of its then existing indebtedness, with accrued interest thereon, all of the said new capital stock was then issued, and ever since has been and still is outstanding. By the issuance of said new capital stock, and use of a part of the proceeds of the new bond issue referred to in "Item 5" of this subdivision, all of the Oregon and California Railroad Company's then existing indebtedness was fully paid and discharged, and the several mortgages and other instruments purporting to secure the same were canceled and satisfied.

ITEM 2. On June 2nd 1881, the defendant Oregon and California Railroad Company executed and delivered to Henry Villard, Robert Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of the said preferred stock, the Trust Deed a correct

copy of which is attached to the Bill as "Exhibit D".

ITEM 3. On or about June 28th 1881, the Trust Deed referred to in the next preceding "Item 2" of this subdivision, was recorded in the office of the County Recorder of Multnomah County, Oregon, in Book 27 of Mortgages at page 179; and thereafter, and about the same time, the said Trust Deed was recorded in the office of the County Recorder of the Several Counties in which was situated any part of the lands granted by either of said land-grants.

ITEM 4. Thereafter such proceedings were had and action taken under the provisions of the said Trust Deed, by and with the consent and co-operation of the Oregon and California Railroad Company, that the defendant Stephen T. Gage became, and now is, the sole surviving Trustee thereunder; and the said defendant Stephen T. Gage as such Trustee (but not individually), and the defendant Southern Pacific Company as the present owner of all of said preferred stock, claim and assert a lien upon the said lands, under and by virtue of the said Trust Deed.

ITEM 5. By the issuance and negotiations of two separate issues of its corporate bonds, bearing date June 1st 1881 and May 26th 1883, respectively (known and designated as "First Mortgage Bonds" and "Second Mortgage Bonds", respectively), the defendant Oregon and California Railroad Company provided approximately $5,000,000 further construction funds; and on

or about June 1st 1881, the work of constructing the East Side railroad was resumed and thereafter continued until about January 1884. During the last-mentioned period of construction the East Side railroad was constructed and extended from Roseburg to a point about one and one-quarter miles southerly from Ashland, in the State of Oregon, a total distance of approximately 145 miles.

ITEM 6. About January 1884, the last-mentioned construction funds became exhausted, and the work of further construction was discontinued until about April 1887, when it was resumed.

ITEM 7. About January 19th 1885, the said First Mortgage Bonds and Second Mortgage Bonds being still outstanding, in a suit theretofore brought and then pending in the United States Circuit Court for the District of Oregon, wherein certain of the holders of the said First Mortgage Bonds were plaintiffs and the defendant Oregon and California Railroad Company and others were defendants, the railroads and other property of the said Oregon and California Railroad Company were placed in the hands of a Receiver then and in that suit appointed for that purpose.

ITEM 8. On May 12th 1887, the general status of the said land-grants was as follows:

(*a*). Under the East Side grant, during the year 1871 to 1877, inclusive, patents for 323,078.68 acres of land (being lands contiguous to the first 125 miles

of the said East Side Railroad) were applied for by and issued to the defendant Oregon and California Railroad Company. Except as aforesaid, no patents under the said East Side grant were issued until the year 1893.

(*b*). No patents under the West Side grant were issued prior to the year 1895.

(*c*). The total length of the East Side railroad is, approximately, 367 miles. With the exception of the northerly 197 miles thereof, no part of the East Side railroad was constructed within the times prescribed therefor; and on May 12th 1887, the portion of the East Side railroad extending from Ashland to the southerly boundary line of the State of Oregon, remained unconstructed.

(*d*). That part of the West Side railroad extending from Forest Grove to Astoria, was never constructed, and because thereof the granted lands of the West Side grant contiguous to such unconstructed railroad were, by Act of Congress approved January 31st 1885, entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon.", declared forfeited to and the ownership thereof was resumed by the United States.

(*e*). Of the aforesaid granted lands, 163,430.28 acres were sold by the Oregon and California Railroad Company prior to May 12th 1887. Nearly all of the said sold lands were so sold to actual settlers, in small quantities, although in a few instances such sales were

made in quantities exceeding 160 acres to one person, and for prices slightly in excess of $2.50 per acre.

SUBDIVISION VII.

ITEM 1. The defendant Southern Pacific Company was incorporated by an Act of the General Assembly of the State of Kentucky, entitled "An Act to incorporate the Southern Pacific Company.", approved March 17th 1884; which Act was amended by an act of the General Assembly of the State of Kentucky, approved March 21st 1888, entitled "An Act to amend 'An Act to incorporate the Southern Pacific Company' approved March 17th 1884." A correct copy of the said Act of March 17th 1884 and amendatory Act of March 21st 1888, is hereto attached, marked "Exhibit No. 4 to Stipulation."

ITEM 2. "Exhibit No. 5 to Stipulation", hereto attached, is a correct copy of Articles of Association, Amalgamation and Consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, filed in the office of the Secretary of State of the State of California on June 23rd 1870, amalgamating and consolidating the said Companies into the Central Pacific Railroad Company, incorporated as such by the said Articles.

ITEM 3. "Exhibit No. 6 to Stipulation", hereto attached, is a correct copy of Articles of Amalgamation and Consolidation between the Central Pacific Railroad Company, the California and Oregon Railroad Com-

pany, and the other Railroad Companies therein named, filed in the office of the Secretary of State of the State of California on August 22nd 1870.

ITEM 4. At the time Articles of Amalgamation and Consolidation referred to in the next preceding "Item 3" of this subdivision were filed, the said Central Pacific Railroad Company was the owner of all unsold lands west of a point near Ogden, in Utah, coterminous with the Central Pacific railroad from Ogden by way of Elko and Reno, in Nevada, Colfax, Auburn, Sacramento, Stockton, Niles and San Jose to San Francisco, in California, granted by the Act of Congress approved July 1st 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes.", reference to which is hereby made as the said Act is published in United States Statutes at Large, Volume 12, page 489 and following, as enlarged by the amendatory Act of Congress approved July 2nd 1864, entitled "An Act to amend an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes.', approved July first eighteen hundred and sixty-two.", reference to which is hereby made as the said amendatory Act is published in United States Statutes at Large, Volume 13, page 356 and following; and at the time the said Articles of

Amalgamation and Consolidation were filed, the said California and Oregon Railroad Company was the owner of all unsold lands in California, granted by the Act of Congress approved July 25th 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon.", a correct copy of which is set forth on pages 5 to 10, inclusive, of the Bill.

ITEM 5. From the date of filing the last-mentioned Articles of Amalgamation and Consolidation until July 29th 1899, the said Central Pacific Railroad Company remained the owner of all lands of the three several land-grants setforth in the next preceding "Item 4" of this subdivision, which were unsold at the date of filing the said last-mentioned Articles, and were not thereafter, from time to time (prior to July 29th 1899), sold by the said Central Pacific Railroad Company; and by the instrument in writing executed and delivered on July 29th 1899, a copy of which is hereto attached, marked "Exhibit No. 7 to Stipulation.", the said Central Pacific Railroad Company granted and conveyed unto the Central Pacific Railway Company, all lands of the said land-grants remaining unsold on July 29th 1899. The statements in this Item and the last preceding Item 4 concerning the ownership and conveyance of the lands granted by said Acts of Congress are made subject to the terms and provisions of said Acts of Congress respectively, and all rights of the United States there-

under—the title to said lands not being an issue in the suit at bar.

ITEM 6. "Exhibit No. 8 to Stipulation", hereto attached, is a correct copy of the Articles of Association and Certificate of Incorporation of the Central Pacific Railway Company, referred to in the next preceding "Item 5" of this subdivision hereof.

ITEM 7. "Exhibit No. 2" to the printed "Joint and Several Answer of Defendants Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, to Bill of Complaint of the United States, in the above-entitled Case.", on file herein (hereinafter referred to as the "Joint and Several Answer"), is a correct copy of the Agreement, dated February 7th 1885, by which the said Central Pacific Railroad Company leased its said railroad from Ogden to San Francisco and branch thereof from Roseville Junction to Delta, together with certain other railroads and property connected therewith in the said Agreement described, unto the said Southern Pacific Company; pursuant to which Agreement the said Southern Pacific Company has held possession of the railroads and other property therein described, and operated the said railroads, as such lessee, continuously since the date of the said Agreement, and still continues to so operate the same.

ITEM 8. "Exhibit F" to the Bill is a correct copy of the Agreement, dated July 1st, 1887, by which the

defendant Oregon & California Railroad Company leased all its railroads in Oregon (including its East Side railroad and its West Side railroad) and other property used in connection therewith in the said Agreement described, unto the defendant Southern Pacific Company; pursuant to which Agreement the said Southern Pacific Company held possession of and operated the said railroads and property as such lessee, continuously from June 6th 1888, until August 1st, 1893.

ITEM 9. "Exhibit No. 8" to the said Joint and Several Answer, is a correct copy of the Agreement, dated January 1st 1888, by which the said Central Pacific Railroad Company leased its said railroad from Delta to the north boundary line of the State of California, unto the said Southern Pacific Company; pursuant to which Agreement the said Southern Pacific Company has held possession of and operated the said railroad, as such lessee, continuously since the date of said Agreement, and still continues to so operate the same.

ITEM 10. "Exhibit G" to the Bill is a correct copy of a new Lease, dated August 1st 1893, by which the Oregon & California Railroad Company leased all its railroads in Oregon (including the East Side railroad and West Side railroad) and other property used in connection therewith in the said Lease of July 1st 1887, described in "Item 8" of this Subdivision hereof, unto the defendant Southern Pacific Company; pursuant to which last-mentioned Lease the said Southern Pacific

Company has held possession of and operated the said railroads continuously from August 1st 1893, inclusive, to the present time, and still continues to so hold possession of and operate the same.

ITEM 11. On or about December 1867, the principal stockholders of the said Central Pacific Railroad Company of California became the principal stockholders of the said California and Oregon Railroad Company; and on or about August 1st 1899, the said Southern Pacific Company became, has ever since remained and still is, the principal stockholder of the said Central Pacific Railroad Company; and on or about August 1st, 1899, the said Southern Pacific Company became, has ever since remained and still is, the principal stockholder of the said Central Pacific Railway Company; and on or about April 9th 1901, the said Southern Pacific Company became, has ever since remained and still is, the principal stockholder of the said Oregon and California Railroad Company.

ITEM 12. On or about July 31st 1885, the defendant Oregon and California Railroad Company and said Central Pacific Railroad Company entered into a certain agreement in writing, a copy of which marked "Exhibit No. 9 to Stipulation", is hereto attached; and on or about October 11th 1886, the said Central Pacific Railroad Company, the Pacific Improvement Company (a corporation organized in 1878 under the laws of the State of California) and the defendant Southern Pacific Company entered into a certain agreement in writing a

copy of which marked "Exhibit No. 1" is attached to the said printed Joint and Several Answer. Prior to the execution of either of said two last-mentioned contracts, the stockholders of the Oregon and California Railroad Company became and were organized under the name "Stockholders Committee", certain of the owners of the aforesaid mortgage bonds became and were organized under the name "Frankfort Bondholders Committee", and certain other of the owners of said bonds became and were organized under the name "London Bondholders Committee", said Bondholders Committee representing the owners of substantially all of the aforesaid First Mortgage Bonds and Second Mortgage Bonds of said Oregon and California Railroad Company.

ITEM 13. "Exhibit E" to the Bill is a correct copy of a written Contract made and entered into by and between the parties named therein, on March 28th 1887.

ITEM 14. Pursuant to the provisions of the said Contract of March 28th 1887, on or about May 12th 1887 all of the capital stock and all of the said Second Mortgage Bonds of the Oregon and California Railroad Company were transferred, assigned and delivered to the said Pacific Improvement Company, and all of the said First Mortgage Bonds were transferred, assigned and delivered to the defendant Southern Pacific Company. The statements of this Item and the next succeeding Item 15 concerning the transferring, assigning and delivering of the capital stock of the defendant

Oregon and California Railroad Company to said Pacific Improvement Company, and by the latter to said Southern Pacific Company, shall not be taken as an admission on the part of the Government that said capital stock was not held by said Pacific Improvement Company in trust for said Southern Pacific Company, as charged in the Bill.

ITEM 15. The said Pacific Improvement Company held said capital stock of the Oregon and California Railroad Company until April 9th 1901, when it assigned and transferred the same unto the said Southern Pacific Company; and the said Southern Pacific Company has ever since remained, and still is, the owner and holder of said capital stock. The said Pacific Improvement Company owned and held the controlling interest in said Southern Pacific Company from about March 1887 until after April 9th 1901.

ITEM 16. "Exhibit H" to the Bill is a correct copy of the Trust Mortgage, bearing date July 1st 1887, given by the said Oregon and California Railroad Company to the defendant Union Trust Company of New York.

ITEM 17. By that certain provision of the Trust Mortgage referred to in the next preceding "Item 16" of this subdivision hereof, which reads as follows: "And all the property, real, personal or mixed, which on the twelfth day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of

the Oregon and California Railroad Company", reference was had, and intended to be had, to a certain Deed of Trust, executed by the said Oregon and California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, bearing date June 1st 1881, a correct copy of which is attached to the Bill as "Exhibit I."

ITEM 18. The said Trust Mortgage of July 1st 1887, referred to in the next preceding "Item 17" and "Item 16" of this subdivision hereof, was recorded on January 20th 1888, in the office of the County Recorder of Multnomah County, Oregon, in Book 63 of Mortgages, at page 287; and about the same time the said Trust Mortgage was recorded in the office of the County Recorder of each of the several Counties in which was situated any of the lands granted by the said Acts of Congress of July 25th 1866 or May 4th 1870.

ITEM 19. The defendant Oregon and California Railroad Company executed and delivered certain of the bonds provided for by the said Trust Mortgage of July 1st 1887, of which $17,745,000 in amount are still outstanding; the payment of all which bonds, both as to principal and interest, was and is guaranteed by the defendant Southern Pacific Company.

ITEM 20. The Bonds secured by the Mortgage to the defendant Union Trust Company of New York as Trustee were used in large part, pursuant to the provisions of the Contract of March 28th 1887 ("Exhibit

E" appended to the Bill), to retire the Bonds secured by the earlier Mortgages of June 1st 1881 and May 26th 1883, respectively, which had been sold abroad; and a large part of the balance of said Bonds secured by the Mortgage to Union Trust Company of New York also were negotiated abroad; and most of the Bonds secured by the said Mortgage to the defendant Union Trust Company of New York are now owned abroad—especially in Holland and Germany.

ITEM 21. By the issuance and negotiation of two separate issues of its corporate Bonds bearing date June 1st 1881 and May 26th 1883, respectively, the defendant Oregon and California Railroad Company provided funds aggregating approximately $5,000,000 which were used in the construction of its railroad; and the Bonds secured by the Mortgage of the Oregon and California Railroad Company to the defendant Union Trust Company of New York, dated July 1st 1887, were used to retire the Bonds secured by the Mortgages of 1881 and 1883, aforesaid, and to complete the construction of the said railroad.

ITEM 22. The total amount of the Bonds issued under and secured by the Mortgage of the Oregon and California Railroad Company to the defendant Union Trust Company of New York was $20,000,000; and from the proceeds of the sale of lands received by it, the said Union Trust Company of New York has paid off $2,255,000 of said Bonds, leaving a balance outstanding of $17,745,000.

ITEM 23. The defendant Union Trust Company of New York, as trustee for the owners and holders of said Bonds, claims to have and hold a lien upon the said granted lands, under and by virtue of the said Trust Mortgage of July 1st, 1887.

ITEM 24. During the year 1887, the last section of the East Side railroad, extending from a point near Ashland to the southern boundary line of Oregon, and the section of railroad in California extending from Delta to connection with the said East Side railroad at the said southern boundary line of Oregon, were constructed by the said Pacific Improvement Company. "Exhibit No. 10 to Stipulation," hereto attached, is a correct copy of a certain contract made and executed on or about June 6th 1887, by and between the said Oregon and California Railroad Company and Pacific Improvement Company. At the time of the execution of said contract of June 6th 1887, a large part of said work of construction had been performed by said Pacific Improvement Company; but it is not intended hereby to stipulate whether said prior work of construction was performed pursuant to said contract of October 11th 1886, or some other contract, or otherwise.

ITEM 25. On or about June 6th 1888, the aforesaid Receivership proceedings were dismissed, and the said Receiver was discharged, and all of the said First Mortgage Bonds and Second Mortgage Bonds (not including the bonds issued under the Trust Mortgage of July 1st 1887), together with all Mortgages and Trust

Deeds securing the payment thereof, were canceled and discharged; and thereupon and ever since the defendant Southern Pacific Company has continued in possession of, pursuant to its hereinbefore mentioned Leases from the Oregon and California Railroad Company (copy attached to the Bill as "Exhibit F" and "Exhibit G"), of the railroads and all property therein described.

SUBDIVISION VIII.

ITEM 1. "Exhibit No. 11 to Stipulation", hereto attached, is a correct copy of a Resolution adopted by the Board of Directors of the Oregon & California Railroad Company on February 7th 1891; "Exhibit No. 12 to Stipulation", hereto attached, is a correct copy of Resolution adopted by the said Board of Directors on March 14th 1892; and the forms of Deeds setforth in the said Exhibits are the forms of Deeds referred to in Subdivision VIII, 3rd paragraph on page 41 of the Bill herein.

ITEM 2. Lands of the said East Side grant to the amount of 2,422,708 acres were patented to the defendant Oregon and California Railroad Company between the years 1893 and 1906, both years inclusive; and the lands of the said West Side grant to the amount of 128,618.13 acres were patented to the said Company between the years 1895 and 1903, both years inclusive; which patents were issued, from time to time, between the said dates pursuant to applications made therefor by the said Oregon and California Railroad Company, from time to time, between the years 1876 and 1906.

No patent has issued to the Oregon and California Railroad Company, under either of said land-grants, since the year 1906, except Supplemental Patent No. 3, dated June 21st 1909, for 161.75 acres of land in the indemnity limits of the said East Side grant.

ITEM 3. A rapidly increasing demand for the lands of the Oregon and California Railroad Company, in large quantities and at increased prices, commenced about 1889 or 1890, and has continued ever since.

ITEM 4. From about 1894 to 1903, the said Oregon and California Railroad Company sold and disposed of some of its said granted lands to persons not actual settlers in quantities exceeding 160 acres to one person, and at prices exceeding $2.50 per acre; and in several instances, between the said dates, the said Company sold lands of the said grants in quantities of from 1,000 to 20,000 acres to one purchaser at prices ranging from $5.00 to $20.00 per acre, in one instance at $35.00 per acre, in one instance at $40.00 per acre, and in one instance a sale of 45,000 acres at $7.00 per acre was made by the said Company to a single purchaser.

ITEM 5. The defendant Oregon and California Railroad Company has heretofore made approximately 5,306 sales of its land-grant lands, aggregating 820,000 acres; approximately 4,930 of which sales were for quantities not exceeding 160 acres to one purchaser, aggregating about 296,000 acres, and approximately 376 of which sales were for quantities exceeding 160 acres to one pur-

chaser, aggregating about 524,000 acres.

ITEM 6. Substantially all of the said 524,000 acres were sold to persons other than actual settlers, who purchased the land for purposes other than settlement, and at prices in excess of $2.50 per acre; approximately 478,000 acres of which 524,000 acres were sold since the year 1897; and approximately 370,000 acres of the said 524,000 acres were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

ITEM 7. Approximately three-fourths, in number, of all sales made since the year 1897, were made by Contracts providing for payment of purchase price in from five to ten equal annual payments, and execution of conveyance upon final payment; many of which sales were still pending under such Contracts on January 1st 1903, the conveyances under which were executed from time to time after January 1st 1903, and a considerable number of said Contracts were still pending when this suit was brought.

ITEM 8. Of the total sales made as aforesaid, 4508 had been fully executed and conveyances given aggregating 740,002.45 acres at the time the said printed Joint and Several Answer was filed; and at said time 571 executory Contracts were still pending, aggregating 81,684.31 acres.

ITEM 9. "Exhibit No. 4" attached to the said Joint and Several Answer is, substantially, a correct statement of all land sales made by the defendant Oregon

and California Railroad Company, including all sales executed by conveyances and all sales under Contracts not executed by conveyances, at the time the said Joint and Several Answer was filed. "Exhibit J", attached to the Bill is, substantially, a correct statement of all conveyances of said granted lands made by the defendant Oregon and California Railroad Company, and of all contracts pending at the time said "Exhibit J" was compiled, viz: July 1st, 1908. The apparent discrepancies between said "Exhibit No. 4" attached to the said Joint and Several Answer, and said "Exhibit J" attached to said Bill, are explained by the fact that said "Exhibit No. 4" attached to said Joint and Several Answer is compiled with reference to the original date of sales; while said "Exhibit J" attached to said bill is compiled with reference to the date of excuted conveyances, except as to pending contracts; moreover the classification of sales (as to purchase price and quantity sold to each purchaser) in said "Exhibit No. 4" attached to said Joint and Several Answer differs from the classification used in said "Exhibit J" attached to said Bill.

SUBDIVISION IX.

ITEM 1. At or about the time the said Joint and Several Answer was filed herein, there remained unsold of said granted lands, 2,360,492.81 acres, of which 2,075,616.45 acres were theretofore patented unto the Oregon and California Railroad Company under the

said land-grants, and 284,876.36 acres thereof at that time remained unpatented; all of which unsold lands are claimed by the said Oregon and California Railroad Company under and by virtue of the said land grants.

ITEM 2. Approximately 1,800,000 acres of the said unsold lands are situated southerly from Eugene, and constitute more than one-third, in alternate sections, of all lands lying within approximately twenty miles on each side of the East Side railroad from Eugene to the southern boundary line of Oregon; only a small portion of which granted lands, in that part of the East Side grant, have ever been sold.

ITEM 3. Since January 1st 1903, and principally since February 14th 1907, persons exceeding 4,000 in number have severally applied to the defendant Oregon and California Railroad Company to purchase certain of the said unsold lands in quantities not exceeding 160 acres to each person; said applicants claiming that they desired such lands to settle and establish a home upon; and in a few instances claiming that they had settled and established a home upon the lands applied for by them; and at or about the time the said applications were made, each applicant stated that he then was willing and able to tender payment at the rate of $2.50 per acre for the lands applied for by him, and in a few instances such tender was made.

ITEM 4. On or about January 1st 1903, the Oregon and California Railroad Company withdrew from sale

all the said unsold lands; and the said Company at all times refused, and still refuses, to approve or accept any of the applications to purchase referred to in the next preceding "Item 3" of this subdivision hereof, claiming that all the lands so applied for are essentially timber lands, unsuitable for any other purpose.

ITEM 5. The defendant Oregon and California Railroad Company now assumes and asserts an absolute and unconditional estate in and to all of the said unsold lands.

ITEM 6. "Exhibit K" to the Bill, as corrected by "Exhibit No. 5" to the said Joint and Several Answer, contains a correct list and description of all the said unsold lands which have heretofore been patented.

ITEM 7. "Exhibit No. 6" to the said Joint and Several Answer, contains a correct list and description of all unsold, unpatented primary lands, and of all unsold selected but unpatented indemnity lands (claimed by the defendant Oregon and California Railroad Company under the said land-grants.)

ITEM 8. The reasonable value of the said unsold lands exceeds the sum of $30,000,000.

SUBDIVISION X.

ITEM 1. The defendant Oregon and California Railroad Company has, in addition to the purchase price received from sales of the said granted lands, received and enjoyed the following other benefits on account of

said granted lands, between April 1st 1870 and April 30th 1911; towit:

(*a*). A large number of contracts of sale have been forfeited because of defaults in payment of the annual installments due thereon, and the installments previously paid, amounting in all to $88,205.06 have been retained by the said Railroad Company.

(*b*). A portion of the said lands has, from time to time, been leased for certain rentals therefor paid the said Railroad Company, amounting in all to $5,532.07.

(*c*). The said Railroad Company has cut and used large quantities of timber growing upon the said land, receiving the benefit therefrom to the amount of $18,-850.25, a reasonable stumpage value thereof at the times of such cutting.

(*d*). In addition to the aforesaid amounts, the said Railroad Company has also received $10,687.92, collected from persons who, without its permission or consent, cut timber growing on the said lands.

SUBDIVISION XI.

The foregoing "Subdivision X" hereof sets forth, substantially, the correct value of all growing timber cut by or with consent of the defendant Oregon and California Railroad Company from the said unsold lands, and the amount received by the said Railroad Company for growing timber cut by others from the said lands without its consent; and the said Railroad

Company has not cut, nor permitted others to cut, timber growing on the said unsold lands, since the commencement of this suit; and all of the said unsold lands now are, and at all times since this suit was brought have been, withdrawn from sale by the said Railroad Company.

SUBDIVISION XII.

ITEM 1. Until about the year 1890, or 1891, there was substantially no demand for said granted lands, except for the purpose of settlement or by persons of limited means able to purchase such lands only in quantities not exceeding 160 acres and at prices not exceeding $2.50 per acre; and nearly all sales made prior to the year 1894 were of that character, and to such persons.

ITEM 2. During a large part of the time prior to the year 1894, the defendant Oregon and California Railroad Company maintained an immigration bureau, engaged in inducing immigration and settlement upon said lands; and the greater part of the sales of lands to persons not settlers thereon, or in quantities exceeding 160 acres to one person, or for prices exceeding $2.50 per acre were made after the year 1894.

SUBDIVISION XIII.

ITEM 1. "Exhibit No. 17 to Stipulation" is a correct statement of the facts therein set forth; and is appended hereto for the purpose of correcting "Exhibit No. 9" to the said Joint and Several Answer, and of

admitting the same to be true as thus corrected.

ITEM 2. "Exhibit No. 10" to the said Joint and Several Answer, is a correct statement of the facts therein set forth, after striking out "A few", the first two words thereof.

ITEM 3. "Exhibit L" to the Bill is a correct copy of a Memorial adopted by the Legislature of Oregon on February 14th 1907, and communicated to Congress immediately thereafter.

ITEM 4. The Joint Resolution of Congress, a correct copy of which is set forth on pages 53 and 54 of the Bill, was approved on April 30th 1908; and this suit was instituted pursuant to said Joint Resolution.

SUBDIVISION XIV.

Since the beginning of this suit, forty-five other and separate suits have been brought in the name of the United States, each against the defendants to this stipulation and another person or other persons, asserting and praying for the enforcement of claimed rights and equitable remedies pertaining to certain of said granted lands subject to such suits, sold and conveyed by the defendant Oregon and California Railroad Company to such other persons defendants, in alleged violation of alleged provisions or conditions of the said land grants.

SUBDIVISION XV.

The parties hereto disagree as to what are the true

facts which Subdivision "XV" of the pleadings of the respective parties put at issue, and proof of such facts at issue is left open.

SUBDIVISION XVI.

Pursuant to the rules and regulations of the Department of Interior in that behalf adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the appropriate land office of the United States by the defendant Oregon and California Railroad Company as the "successor and assignee" of the said East Side Company and West Side Company, respectively —which said applications contained description lists of the lands so claimed and for which patents were so applied for; and each of said applications was accompanied and supported by an affidavit in writing signed and sworn to by the Land Agent of the defendant Oregon and California Railroad Company thereto duly authorized, alleging among other things as follows: "The said lands are vacant, unappropriated, are not interdicted mineral, nor reserved lands, and are of the character contemplated by the granting Act" under which patents were applied for, and issued as aforesaid.

SUBDIVISION XVII.

ITEM 1. The Contracts and Deeds executed by the defendant Oregon and California Railroad Company prior to about the year 1894, contained (substantially) the following reservation clause:

"Reserving, however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way or other railroad purposes, when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises, and the right to use all water needed for the operating and repair of said railroad, and also reserving all claim of the United States to the same as mineral lands."

ITEM 2. The words "and also reserving all claim of the United States to the same as mineral land" were stricken from the said reservation clause in the Contracts and Deeds executed by the said Railroad Company from about 1894 until about 1902; and in Contracts and Deeds executed by the said Railroad Company during and at all times after about the year 1902, the words "and also reserving and excepting from said described premises so much thereof as may be mineral lands", were substituted for the said stricken out words.

ITEM 3. The defendant Oregon and California Railroad Company claims to be the owner of all rights, lands and interest in lands, at any time excepted or reserved by the said clause.

SUBDIVISION XVIII.

The undersigned defendants claim that the defendant Oregon and California Railroad Company is, and claims to be, the owner of said granted lands (primary

and indemnity), patented and unpatented, not heretofore sold and transferred by its Deeds of conveyance, together with all right of way and other rights and property in Oregon described as granted by section 3 of the said Act of July 25th 1866 and the first section of the said Act of May 4th 1870, and all the rights and property reserved as aforesaid for any and all railroad purposes, and the improvements upon all of the said lands and property; and the undersigned defendants claim that all of the said land and property is subject to the defendant Union Trust Company's said Trust Mortgage of July 1st 1887.

SUBDIVISION XIX.

ITEM 1. "Exhibit No. 13 to Stipulation" attached hereto, contains a correct statement of all maps of survey and location filed in the office of the Secretary of Interior of the United States by the East Side Company and the Oregon and California Railroad Company, and the dates thereof, under and pursuant to the provisions of the said East Side grant; also a correct statement of the map filed in the same office by the West Side Company under and in pursuance of the said West Side grant, with the date of such filing.

ITEM 2. "Exhibit No. 14 to Stipulation" attached hereto, contains a correct statement of the dates of construction, completion, approval and acceptance, of the several sections of the said East Side and West Side railroads, separately stated.

ITEM 3. "Exhibit No. 11" to the said Joint and Several Answer, correctly shows the quantity of land patented to the Oregon and California Railroad Company, compiled by years, separately stated as to the East Side and West Side land grants, and also giving the dates of all Acts of Congress recited or referred to in such patents.

ITEM 4. All of the West Side grant patents listed on the said "Exhibit No. 11" to Joint and Several Answer, recite that they were issued to the said Oregon and California Railroad Company "as successor to the Oregon Central Railroad Company"; but no patent issued for lands of the East Side grant, contains a recitation that it was issued to the Oregon and California Railroad Company "as successor to" any company.

SUBDIVISION XX.

ITEM 1. "Exhibit P" to the Bill gives a correct list of the suits therein referred to; and a fair statement, of reasonable accuracy, is given on page 60 of the Bill, of the allegations and substance of the complaints filed in those suits.

ITEM 2. During the month of December 1908, all of the said suits other than the one brought by Roy W. Minkler, were consolidated with this suit. Thereafter, and on or about January 15th 1909, all the persons other than the said Roy W. Minkler named in the said "Exhibit P" as complainants, filed herein their cross-com-

plaints; and on April 24th 1911, demurrers theretofore filed by the undersigned defendants to each and all of said cross-complaints were sustained by order of the Court.

ITEM 3. On or about June 9th 1910, the said suit brought by Roy W. Minkler, was dismissed by mutual consent of all parties thereto.

SUBDIVISION XXI.

ITEM 1. An Act was passed by Congress entitled "An Act to create an Auditor of Railroad Accounts and other purposes.", approved June 19th 1878; a correct copy of which Act, as published in United States Statutes at Large, Volume 20, on pages 169 and following, is attached hereto marked "Exhibit No. 15 to Stipulation".

ITEM 2. By an Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for other purposes.", approved March 3rd 1881, published in United States Statutes at Large, Volume 21, pages 385 to 413, inclusive, Congress (on pages 409-410 of said publication) provided as follows:

> "*Office of Auditor of Railroad Accounts*—For Auditor, who shall hereafter be styled Commissioner of Railroads, four thousand five hundred dollars; book-keeper two thousand four hundred

dollars; assistant book-keeper, two thousand dollars; railroad engineer, two thousand five hundred dollars; one clerk, one thousand four hundred dollars; one copyist, nine hundred dollars; one messenger, six hundred dollars; traveling and other expenses, two thousand five hundred dollars; incidental expenses, three hundred dollars; in all, seventeen thousand one hundred dollars."

ITEM 3. By an Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.", approved April 17th 1900, published in United States Statutes at Large, Volume 31, pages 86 to 134, inclusive, Congress (on pages 124-125 of said publication) provided as follows:

"*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; book-keeper, two thousand dollars; assistant book-keeper, one thousand eight hundred dollars; one clerk of class two; one clerk, one thousand dollars; and one assistant messenger; in all, eleven thousand four hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads shall terminate on the thirtieth day of June, nineteen hundred and one."

ITEM 4. By an Act entitled "An Act making appropriations for the legislative, executive, and judicial

expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and two, and for other purposes.", approved March 3rd, 1901; published in United States Statutes at Large, Volume 31, pages 960 to 1009, inclusive, Congress (on page 1000 of said publication) provided as follows:

> "*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; book-keeper, one thousand six hundred dollars; one clerk of class two; one clerk, one thousand dollars; and one assistant messenger; in all, nine thousand two hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and two, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior, together with the records and files of the office."

ITEM 5. By an Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.", approved June 28th 1902, published in United States Statutes at Large, Volume 32, Part 1, pages 419 to 481, inclusive, Congress (on pages 455-456 of said publication) provided as follows:

> "*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; one clerk, one thousand dollars; one assistant mes-

senger, seven hundred and twenty dollars; in all six thousand two hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and three, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior together with the records and files of the office."

ITEM 6. By an Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth nineteen hundred and four, and for other purposes.", approved March 3rd 1903, published in United States Statutes at Large, Volume 32, Part 1, pages 1083 to 1147, inclusive, Congress (on page 1119 of said publication) provided as follows:

"*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; one clerk, one thousand dollars; one assistant messenger, seven hundred and twenty dollars; in all six thousand two hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and four, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior together with the records and files of the office."

ITEM 7. The said Bureau of the Interior Depart-

ment was organized as provided by the said Act of June 19th 1878, and continuously administered as such under annual appropriations from Congress until the termination of said Bureau and the transfer of the duties, files and records thereof to the Secretary of the Interior, in the year 1904, as required by the said Act of March 3rd 1903; and, pursuant to the requirements of the said Act of June 19th 1878, the forms of reports to be made by the Railroad Companies contemplated by the said Act, including the defendant Oregon and California Railroad Company, were prepared and adopted and transmitted to the said Railroad Companies, including the defendant Oregon and California Railroad Company, by the said Bureau, from 1879 to 1903; and the defendant Oregon & California Railroad Company complied with the provisions of the said Act, and the demands of the said Bureau, as to the making of said reports, continuously from 1879 to 1903, both years inclusive, as is hereinafter set forth.

ITEM 8. Beginning with the report for the half year ending December 31st 1879, and continuing down to and including the year 1903, reports were made of the transactions of the Land Department of the defendant Oregon & California Railroad Company, upon the said blanks formulated and furnished therefor by the said Bureau of the Interior Department, as follows:

THIS PAGE IS BOUND VERTICAL IN BOOK

(*1st*) *For the half year ending December 31st 1879:*

Total cash receipts from all sales to date	$83,579.93
Average price per acre for all sales to date	2.23
Average price per acre for all sales during half year	2.39
Average price per acre for all purchases to date	2.48
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.25
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.50

(*2nd*) *For the half year ending June 30th 1880:*

Total cash receipts from all sales to date	$95,873.99
Average price per acre for all sales to date	2.27
Average price per acre for all sales during half year	2.28
Average price per acre for all purchases to date	2.27
Maximum price per acre from sales (not town lots)	5.00
Minimum " " " " " " " "	1.25
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

(*3rd*) *For the half year ending December 31st 1880:*

Total cash receipts from all sales to date	$106,621.36
Average price per acre for all sales to date	2.26
Average price per acre for all sales during half year	2.12
Average price per acre for all purchases to date	2.26
Maximum price per acre from sales (not town lots)	5.00
Minimum " " " " " " " "	1.00
Maximum price per acre now asked " " "	5.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

(*4th*) *For the half year ending June 30th 1881:*

Total cash receipts from all sales to date	$121,610.33
Average price per acre for all sales to date	2.26
Average price per acre for all sales during half year	2.24
Average price per acre for all purchases to date	2.26
Maximum price per acre from sales (not town lots)	10.00
Minimum " " " " " " " "	1.25
Maximum price per acre now asked " " "	5.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

THIS PAGE IS BOUND

(*5th*) *For the half year ending December 31st 1881:*	
Total cash receipts from all sales to date	$131,633.02
Average price per acre for all sales to date	2.25
Average price per acre for all sales during half year	2.25
Average price per acre for all purchases to date	2.25
Maximum price per acre from sales (not town lots)	5.00
Minimum " " " " " " " "	1.25
Maximum price per acre now asked " " "	10.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00
(*6th*) *For the half year ending June 30th 1882:*	
Total cash receipts from all sales to date	$177,712.57
Average price per acre for all sales to date	2.24
Average price per acre for all sales during half year	2.24
Average price per acre for all purchases to date	2.24
Maximum price per acre from sales (not town lots)	3.50
Minimum " " " " " " " "	1.12
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

VERTICAL IN BOOK

105

(7th) *For the half year ending December 31st 1882:*

Total cash receipts from all sales to date	$198,302.97
Average price per acre for all sales to date	2.25
Average price per acre for all sales during half year	2.25
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	1.00
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " " "	0.25
Average " " " " " " " " "	2.00

(8th) *For the half year ending June 30th 1883:*

Total cash receipts from all sales to date	$228,794.28
Average price per acre for all sales to date	2.89
Average price per acre for all sales during half year	2.75
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " " "	1.00
Average " " " " " " " " "	2.50

THIS PAGE IS BOUND

(*9th*) *For the year ending June 30th 1884:*

Total cash receipts from all sales to date	$268,317.92
Average price per acre for all sales to date	2.4087
Average price per acre for all sales during year	2.7250
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

(*10th*) *For the year ending June 30th 1885:*

Total cash receipts from all sales to date	$340,039.95
Average price per acre for all sales to date	2.4534
Average price per acre for all sales during year	2.5608
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

(*11th*) *For the half year ending December 31st 1885:*

Total cash receipts from all sales to date	$361,559.86
Average price per acre for all sales to date	2.45
Average price per acre for all sales during half year	2.65
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(*12th*) *For the year ending December 31st 1885:*

Total cash receipts from all sales to date	$366,352.35
Average price per acre for all sales to date	2.43
Average price per acre for all sales during year	2.70
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

THIS PAGE IS BOUND

(13th) *For the half year ending June 30th 1886:*	
Total cash receipts from all sales to date	$384,389.72
Average price per acre for all sales to date	2.47
Average price per acre for all sales during half year	2.99
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50
(14th) *For the half year ending December 31st 1886:*	
Total cash receipts from all sales to date	$407,876.54
Average price per acre for all sales to date	2.44
Average price per acre for all sales during half year	2.99
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(*15th*) *For the year ending December 31st 1886:*	
Total cash receipts from all sales to date	$407,876.54
Average price per acre for all sales to date	2.44
Average price per acre for all sales during year	2.99
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50
(*16th*) *For the half year ending June 30th 1887:*	
Total cash receipts from all sales to date	$435,254.92
Average price per acre for all sales to date	2.49
Average price per acre for all sales during half year	3.19
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

THIS PAGE IS BOUND

(*17th*) *For the half year ending December 31st 1887:*

Total cash receipts from all sales to date	$458,836.01
Average price per acre for all sales to date	2.51
Average price per acre for all sales during half year	3.40
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(*18th*) *For the year ending December 31st 1887:*

Total cash receipts from all sales to date	$458,836.01
Average price per acre for all sales to date	2.51
Average price per acre for all sales during year	3.24
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(19th)	*For the year ending December 31st 1888:*	
Total cash receipts from all sales to date		$512,598.23
Average price per acre for all sales to date		2.58
Average price per acre for all sales during year		3.74
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		10.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.50
(20th)	*For the year ending June 30th 1889:*	
Total cash receipts from all sales to date		$541,650.33
Average price per acre for all sales to date		2.642
Average price per acre for all sales during year		4.96
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "	, about	3.50

THIS PAGE IS POOR

(*21st*) *For the year ending June 30th 1890:*	
Total cash receipts from all sales to date	$626,520.03
Average price per acre for all sales to date	3.146
Average price per acre for all sales during year	6.32
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00
(*22nd*) *For the year ending June 30th 1891:*	
Total cash receipts from all sales to date	$707,556.88
Average price per acre for all sales to date	3.33
Average price per acre for all sales during year	4.92
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	25.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

(23rd) *For the year ending June 30th 1892:*

Total cash receipts from all sales to date	$785,536.79
Average price per acre for all sales to date	3.61
Average price per acre for all sales during year	5.61
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " "	0.50
Maximum price per acre now asked " " "	25.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

(24th) *For the year ending June 30th 1893:*

Total cash receipts from all sales to date	$859,477.34
Average price per acre for all sales to date	3.66
Average price per acre for all sales during year	4.51
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " "	0.50
Maximum price per acre now asked " " "	25.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

THIS PAGE IS BOUN

(*25th*)	***For the year ending June 30th 1894:***	
Total cash receipts from all sales to date		$909,008.59
Average price per acre for all sales to date		3.63
Average price per acre for all sales during year		2.83
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		25.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00
(*26th*)	***For the year ending June 30th 1895:***	
Total cash receipts from all sales to date		$946,952.81
Average price per acre for all sales to date		3.40
Average price per acre for all sales during year		3.49
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00

(27th) *For the year ending June 30th 1896:*	
Total cash receipts from all sales to date	$986,605.69
Average price per acre for all sales to date	3.40
Average price per acre for all sales during year	3.57
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00
(28th) *For the year ending June 30th 1897:*	
Total cash receipts from all sales to date	$1,020,329.75
Average price per acre for all sales to date	3.40
Average price per acre for all sales during year	3.35
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

THIS PAGE IS BOUN

(29th)	*For the year ending June 30th 1898:*	
Total cash receipts from all sales to date		$1,069,513.25
Average price per acre for all sales to date		3.41
Average price per acre for all sales during year		3.95
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00
(30th)	*For the year ending June 30th 1899:*	
Total cash receipts from all sales to date		$1,284,225.97
Average price per acre for all sales to date		3.75
Average price per acre for all sales during year		2.62
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00

(31st) *For the year ending June 30th 1900:*

Total cash receipts from all sales to date	$1,542,728.71
Average price per acre for all sales to date	3.77
Average price per acre for all sales during year	5.02
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

(32nd) *For the year ending June 30th 1901:*

Total cash receipts from all sales to date	$1,852,756.51
Average price per acre for all sales to date	4.076
Average price per acre for all sales during year	5.348
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots(	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

THIS PAGE IS BOUND

(33rd) *For the year ending June 30th 1902:*

Total cash receipts from all sales to date	$2,298,061.25
Average price per acre for all sales to date	5.00
Average price per acre for all sales during year	7.85
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	20.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(34th) *For the year ending June 30th 1903:*

Total cash receipts from all sales to date	$2,735,532.88
Average price per acre for all sales to date	4.73
Average price per acre for all sales during year	4.22
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	.....
Minimum " " " " " " " "	.....
Average " " " " " " " "	.....

ITEM 9. The said report for the year ending June 30th 1890, set forth in the foregoing "(21st)" paragraph of "Item 8" hereof, contained the following additional item: "Less Contracts surrendered, During the year No. of acres 34,185.27, Total to date No. of acres 82,279.12."

ITEM 10. The said Bureau of the Interior Department made annual reports to the Secretary of Interior, as required by the said Act of June 19th 1878, from 1879 to the termination of said office; which reports were embodied in the annual reports of the Secretary of Interior for the same years, transmitted by him to the President of the United States and by the latter to the two Houses of Congress, and the said Secretary's annual reports were there referred to appropriate Committees and printed as Executive Documents.

ITEM 11. Of the reports so made, embodied, transmitted, referred and printed, are the following, relating to the Oregon & California Railroad Company:

(*1st*)—For the year 1883, Executive Documents 2nd Session, 47th Congress, 1882-83, No. 1. Part 5, Vol. 2, page 471:

> "Oregon & California Railroad Company chartered March 17, 1870, and opened for business December 1st, 1872. The Company is now successor, by consolidation, of the Oregon Central Railroad Company, purchased September 1st, 1880,

chartered July 25, 1866, and owns the land grant of said Company; the Western Oregon Railroad Company, purchased October 9, 1880; and the Albany & Lebanon Railroad Company, leased December 5, 1880, at a rental of $1 for each period of six months, this Company to pay taxes and keep up repairs. The several lines are operated in two Divisions, that is:

East Side Division:	*Miles.*
Main Line, Portland to Roseburg	198
Lebanon Branch, Albany Junction to Lebanon	11.5
West Side Division:	
Portland to Corvallis	97.
Total, exclusive of side-tracks	306.05

"The estimated grant of land to these combined companies amounts to 3,940,000 acres, of which 322,062.40 acres have been patented to June 30, 1882. Of this latter amount lands had been sold up to December 31, 1881—date of last report—for an amount aggregating $309,486.15, at an average price of $2.25 per acre. The minimum price now asked is 25 cents, the maximum $10 per acre."

(*2nd*)—*For the year 1886,* House Executive Documents, 2nd Session, 49th Congress, 1886-87, Vol. 9, page 596:

"The Company has received by patent from the Government 323,068.68 acres of land, of which 237,773.78 acres have been sold. It has received from sales $384,889.72, and there are outstanding on time sales $385,647.67."

(*3rd*)—*For the year 1887,* House Executive Documents, 1st Session, 50th Congress, 1887-88, Vol. 11, page 1173:

"The Company has received by patent from the Government 323,068.88 acres of land, of which 242.516.35 acres have been sold. It has received from sales $407,876.54, and there are outstanding on time sales $377,545.36."

(*4th*)—*For the year 1888,* House Executive Documents, 2nd Session, 50th Congress, 1888-89, Vol. 12, page 454:

"The Company has received by patent from the Government 323,068.68 acres of land, of which 254,964.08 have been sold. It has received from sales $458,836.01. and there are outstanding on time sales $363,638.55, of which $91,313.69 is interest."

(*5th*)—*For the year 1889,* House Executive Documents, 1st Session, 51st Congress, 1889-90, Vol. 11, pages 512, 513:

"The Company has received by patent from the Government 323,068.88 acres of land, of which 269.442.88 have been sold. It has re-

ceived from sales of land $541,650.33, and there are outstanding on account of time sales $394,226.58, of which the sum of $98,992.42 is interest.

"The average price per acre for all sales to date was $2.64, while the average price for sales made during the year was $3.96."

(*6th*)—*For the year 1890,* House Executive Documents, 2nd Session, 51st Congress, 1890-91, Vol. 13, page 174:

"The Company reports that to June 30, 1890, there had been patented to it by the United States, 323,068.68 acres of land, and that 225,170.57 acres had been sold, the total cash receipts from all sales amounting to $626,520.03. There remained outstanding on account of time sales the sum of $516,-287.66. Average price per acre for all sales during year was $6.32."

(*7th*)—*For the year 1891,* House Executive Documents, 1st Session, 52nd Congress, 1891-92, Vol. 16, page 192:

"The Company reports that to June 30, 1891, there had been patented to it by the United States 323,068.68 acres of land, and that there had been sold 298,261.45 acres, the total cash receipts from all sales amounting to $707,556.88. There remained outstanding on account of time sales $449,996.40 principal and $153,031.65 interest, making a total of $603,028.05."

(*8th*)—*For the year 1892,* House Executive Documents, 2nd Session, 52nd Congress, 1892-93, Vol. 14, page 188:

> "The Company's report shows that to June 30, 1892, there had been patented to it by the United States 323,068.68 acres, and that there had been sold 340,475.85 acres, the total cash receipts from all sales amounting to the sum of $785,536.79. There remained outstanding on account of time sales $638,055.08 principal and $194,903.80 interest, making a total of $832,958.98 on this account."

(*9th*)—*For the year 1893,* House Executive Documents, 2nd Session, 53rd Congress, 1893-94, Vol. 15, page 130:

> "The report of the Company shows that to June 30, 1893, the total number of acres received by patent was 323,068.68, that the total cash receipts from all sales had amounted to $859,477.34; and that there remained outstanding on account of time sales the sum of $861,923.64, principal and interest.
>
> "The receipts of the land department for the year were $73,940.55, and the expenses $75,570.07."

(*10th*)—*For the year 1894,* House Executive Documents, 3rd Session, 53rd Congress, 1894-95, Vol. 16, page 143:

> "The Company submits the following report on

June 30, 1894, of the operations of its Land Department to date:

	Acres	
Acquired by United States patent		615,555.58
	Acres	
Disposed of for cash	201.93	
Disposed of on time contracts	17,299.27	
		17,501.20
Balance owned by Company		598,054.38

"The Company also reports that the total cash receipts from all sales to date amounted to $909,008.59, and that there remained outstanding on account of time sales the sum of $891,905.60, principal and interest. The receipts during the year were $49,525.25, and the expenses $55,449.08."

(*11th*)—*For the year 1895,* House Documents, 1st Session, 54th Congress, 1895-96, Vol. 16, page 156:

"The records of the General Land Office show that to June 30, 1895, there had been patented to the Company 1,162,067.28 acres.

"The Company submitted the following report on June 30, 1895, of the operations of its Land Department to date:

	Acres.
Acquired by United States patent	1,163,073.56
Disposed of for cash and on time contracts	381,402.78
Difference, unaccounted for	781,670.78

"The Company also reports that the total cash receipts from all sales to date had amounted to $946,952.81, and that there remained outstanding on account of time sales the sum of $700,064.64, principal and interest.

"The receipts during the year were $37,747.22, and the expenses $59,294.90.

"The average price per acre for all sales to date had been $3.40, and the average price now asked is $3.00."

(*12th*)—*For the year 1896,* House Documents 2nd Session, 54th Congress, 1896-97, Vol. 14, page 166:

"The records of the General Land Office show that to June 30, 1896, there had been patented to the Company 2,180,366.07 acres.

"The Company reports that to June 30, 1896, it had received by patent from the United States, 2,397,717.17 acres of land, and there had been disposed of for cash and on time contracts 387,119.43 acres, leaving the balance owned by the Company, 2,010,657.74 acres.

"The total cash receipts from all sales to date amounted to $986,605.69, and there remained outstanding on account of time sales, principal and interest, $875,146.35.

"The report of the operations of the Land Department during the year, shows a deficit of $81,770.68.

"Average price per acre received was $3.57.

"Average price per acre now asked, $3.00."

(*13th*)—*For the year 1897,* House Documents, 2nd Session, 55th Congress, 1897-98, Vol. 14, page 137:

"The records of the General Land Office show that to June 30, 1897, there had been patented to the Company 2,287,131.66 acres. . . .

"The Company reports that to June 30, 1897, it had received by United States patent 2,503,754.59 acres of land, and had disposed of for cash and on time contracts (not including cancelled contracts) 382,443.44 acres.

"The total cash receipts from all sales to date amounted to $1,020,329.75, and there were outstanding on account of time sales $775,881.34.

"The receipts for the year were $33,724.06, and the expenses $60,012.11.

"The average price per acre now asked for land is $3.00."

(*14th*)—*For the year 1898,* House Documents, 3rd Session, 55th Congress, 1898-99, Vol. 16, page 152:

"The Company reports that to June 30, 1898, it had received by United States patent 2,561,685.30 acres of land, and had disposed of for cash and on time contracts (not including cancelled contracts), 504,606.53 acres.

"The total cash receipts from all sales to date amounted to $1,069,513.25, and there were outstanding on account of time sales $792,999.38.

"The receipts for the year were $49,183.50, and

the expenses $73,183.06.

"The average price per acre now asked for land is $3.00."

(*15th*)—*For the year 1899,* House Documents, 1st Session, 56th Congress, 1899-1900, Vol. 20, page 181:

"The Company reports that to June 30, 1899, it had received by United States Patent 2,659,300.56 acres of land.

"The total cash receipts from all sales to date amounted to $1,234,225.97, and there were outstanding on account of time sales $734,957.16.

"The receipts for the year were $164,712.72, and the expenses $77,138.22.

"The average price per acre now asked for land is $3.00."

(*16th*)—*For the year 1900,* House Documents, 2nd Session, 56th Congress, 1900-01, Vol. 29, page 185:

"The Company reports that to June 30, 1900, it had received by United States patent 2,787,363.55 acres of land.

"The total cash receipts from all sales to date amounted to $1,542,728.71, and there were outstanding on account of time sales $1,189,918.71.

"The receipts for the year were $308,502.74, and the expenses $91,932.33.

"The average price per acre now asked for land is $3.00."

(*17th*)—*For the year 1902,* House Documents, 1st Session 57th Congress, 1901, Vol. 25, page 218:

"The Company reports that to June 30, 1901, it had received by United States patent 2,795,567.64 acres of land.

"The total cash receipts from all sales to date amounted to $1,852,756.51, and there were outstanding on account of time sales, $1,808,935.66.

"The receipts for the year were $310,027.80, and the expenses $72,713.77.

"The average price per acre now asked for land is $3.50."

(*18th*)—*For the year 1903,* House Documents, 2nd Session, 58th Congress, 1903-1904, Vol. 21, page 159:

"The Company reports that to June 30, 1903, it had received by United States patent 2,928,809.55 acres of land, and had disposed of, for cash and on time contracts, 1,032,591.47 acres.

"The total cash receipts from all sales to above date amounted to $2,735,532.88, and there were outstanding on account of time sales, principal and interest, $2,800,637.57.

"The receipts from this source for the year amounted to $437,471.63, and the expenses to $105,936.96.

"The average price per acre now asked for land is $4.78."

ITEM 12. The Commissioner of Railroads appended to several of the reports set forth in the next preceding

"Item 11" hereof, a copy of the said Acts of Congress approved July 25th 1866, April 10th 1869, and May 4th 1870; for greater particularity as to the reports in which said Acts of Congress are set forth, all parties may refer to the said official published reports.

ITEM 13. The original reports by Railroad Companies to the Commissioner of Railroads, and by the latter to the Secretary of Interior and by the latter to the President, and by the President to Congress, for the years mentioned in this Subdivision XXI of Stipulation, shall be treated as having been offered and received in evidence subject to the defendant's right to object to all or any part of the same as irrelevant, and immaterial. None of said reports shall be extended into the record (except as set forth and quoted in this Stipulation), but all parties to this Stipulation may refer to said reports in this District Court and in any Appellate Court, the same as if the said reports were inserted in the record of this case.

ITEM 14. For the purpose of showing the use made by Congress of said reports mentioned in the foregoing "Item 13" of this Subdivision XXI, and for the further purpose of showing whether the fact that lands were sold by the Oregon & California Railroad Company for prices in excess of $2.50 per acre was considered by Congress or any of the Committees thereof, and if so to what extent, all parties to this Stipulation may refer generally to the Reports of Congressional Committees, Congressional debates, and other proceedings shown by

the Congressional Globe or Congressional Record, and other recognized Official Reports; subject to the defendants' right to objection to all or any part of the same as incompetent, irrelevant, and immaterial, *except* that objections as to competency shall not go to identification of the Congressional Globe, Congressional Record, or other Official Reports referred to, beyond the apparent authenticity of the same.

SUBDIVISION XXII.

ITEM 1. The Supreme Court decision in Holliday vs. Elliott, as reported in 8 Oregon 81 et seq., shall be treated as if having been offered and received in evidence, subject to the defendants' objection as irrelevant, and immaterial.

ITEM 2. All Committee Reports and debates in Congress as appearing in the official printed copies of the Congressional Globe or Congressional Record, and all other proceedings in Congress which appear in any recognized Official Reports, relating to the enactments of the Acts of Congress approved July 25th 1866, June 25th 1868, April 10th 1869, May 4th 1870, January 31st 1885, and September 29th 1890, referred to in the Bill of Complaint and Answers, shall be treated as having been offered and received in evidence subject to the defendants' right to object to all or any part thereof as incompetent, irrelevant, and immaterial, *except* that objections as to competency shall not go to identification of the Congressional Globe, Congressional Record,

or other Official Reports referred to, beyond the apparent authenticity of the same.

ITEM 3. "Exhibit No. 16 to Stipulation" attached hereto, contains a correct statement of the Stock quotations therein set forth.

SUBDIVISION XXIII.

The foregoing "Stipulation as to the Facts" is made for the purpose of this suit only; and nothing therein contained shall be held or taken as an admission or estoppel affecting any of the parties thereto in any other suit in equity, action at law, other legal proceeding, or otherwise.

B. D. TOWNSEND,
Counsel and Attorney for Complainant.
Special Assistant to the Attorney General.

P. F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Counsel and Attorneys for Defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage.

JOHN C. SPOONER,
MILLER, KING, LANE and TRAFFORD,
JOHN M. GEARIN, and
DOLPH, MALLORY, SIMON and GEARIN,
Counsel and Attorneys for Defendant Union Trust Company of New York.

EXHIBIT NO. 1 TO STIPULATION.

Know all men by these presents, that we, the undersigned citizens of the State of Oregon, do hereby associate ourselves together as a private incorporation, under and by virtue of the General Incorporation law of said State.

1st.

The corporation hereby created shall be known as the "Oregon Central Railroad Company.", and its duration unlimited.

2nd.

The object and business of the corporation shall be to construct and operate a railroad from the City of Portland, through the Willamette Valley to the southern boundary of the State; under the laws of Oregon, and the law of Congress recently passed granting land and aid for such purpose.

3rd.

The corporation shall have its principal office in the City of Portland.

4th.

The capital stock of said corporation shall be five million dollars, divided into general, and preferred interest bearing, stock, in such proportions as the incorporators, or board of directors, may deem proper.

5th.

The amount of each share of the capital stock shall be one hundred dollars.

6th.

The termini of the railroad proposed to be constructed by said company, shall be for the northern end, at the City of Portland, and for the southern end at some point on or near the southern boundary of the State, as may be hereafter determined by actual survey.

In Witness Whereof we have here set our hands and seals this————————day of September, A. D., 1866.

J. C. SMITH.	Seal.
I. R. MOORES.	Seal.
J. H. MITCHELL.	Seal.
E. D. SHATTUCK.	Seal.
JESSE APPLEGATE.	Seal.
F. A. CHENOWETH.	Seal.
JOEL PALMER.	Seal.
H. W. CORBETT.	Seal.
M. M. MELVIN.	Seal.
GEO. L. WOODS.	Seal.
R. R. THOMPSON.	Seal.
J. C. AINSWORTH.	Seal.
S. G. REED.	Seal.
JOHN McCRACKEN.	Seal.
C. H. LEWIS.	Seal.
B. F. BROWN.	Seal.
T. H. COX.	Seal.
J. GASTON.	Seal.

(Five cents in Revenue Stamps, canceled.)

State of Oregon, Marion County, S. S.:

Be it known that the persons whose names are attached to the foregoing articles of incorporation, appeared before me, the undersigned, a notary public for and within said county and state respectively and at the time and places herein named, to-wit, J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer, and H. W. Corbett at Salem in said State on or about the 29th day of September, 1866, and M. M. Melvin, at Salem on or about October 23rd, 1866, and George L. Woods at Salem on or about November 10, 1866, and R. R. Thompson, J. C. Ainsworth, S. G. Reed, Jno. McCracken and C. H. Lewis at Portland, Oregon, on the 16th day of November, 1866; and they the said several subscribing persons to the aforesaid articles of incorporation did then and there, at the several times set forth in this certificate, sign and seal said articles before me and in my presence, and acknowledge the said signing and sealing to be their voluntary act and deed for the purposes set forth in said articles.

In Witness Whereof, I have here set my signature as said Notary Public and attached my official seal this 16th day November, A. D. 1866.

J. GASTON,

(Official seal) Notary Public.

(Five cents in revenue stamps, cancelled.)

State of Oregon, County of Marion, ss:

On this 20th day of November, A. D. 1866, before me, a notary public in and for said county, personally came the within named B. F. Brown, Thos. H. Cox and J. Gaston, who are personally known to me to be the identical persons whose names are subscribed to the within instrument, and acknowledged to me that they signed the same for the purposes therein set forth.

Witness my hand and seal of office this 20th day of Novemebr, A. D. 1866.

SETH R. HAMMER,

(Seal) Notary Public.

(Endorsed.)

Filed in the office of the Secretary of State this 21st day of November, A. D. 1866, at 10-1/2 o'clock A. M.

SAMUEL E. MAY,

Secretary of State.

Map of the Route of the OREGON CENTRAL RAILROAD.

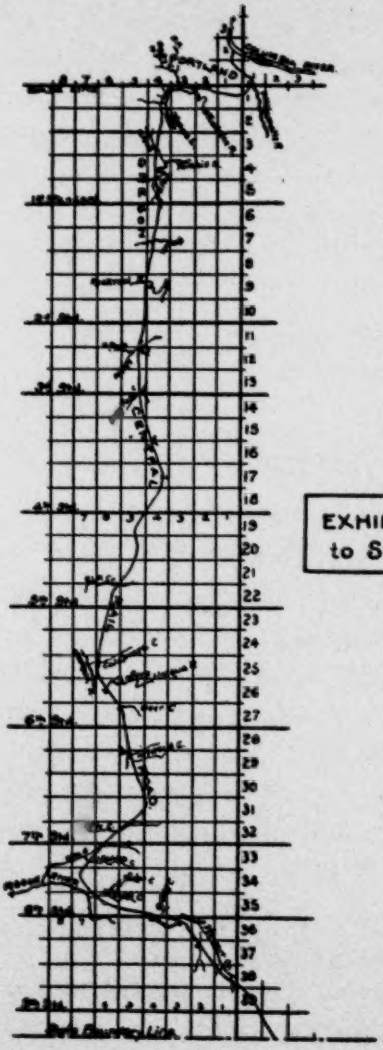

EXHIBIT No 2
to Stipulation.

SCALE 24 MILES TO ONE INCH.

EXHIBIT NO. 3 TO STIPULATION.

Know all men by these presents, that we, J. H. Moores, Geo. L. Woods, S. Ellsworth by Geo L. Woods, his Attorney, I. R. Moores, E. N. Cooke and J. S. Smith, by I. R. Moores, their Attorney, and Samuel A. Clarke have this day incorporated ourselves under and in accordance with the laws of Oregon, and we adopt the following as our Articles of Incorporation.

ARTICLE FIRST.

This corporation shall be known as and do business under the name of the OREGON CENTRAL RAILROAD COMPANY.

ARTICLE SECOND.

The enterprise, occupation and business for which the company incorporates is to construct a railroad with all the necessary branches, fixtures, buildings and appurtenances from Portland, in Oregon, southerly about three hundred miles to the California line, to maintain the said road; in good condition and repair, and to employ the same in the transportation of freight and passengers and freight.

ARTICLE THIRD.

The principal office for the transaction of the business of the Company shall be kept at the City of Salem, Marion County, Oregon.

ARTICLE FOURTH.

The capital stock of the OREGON CENTRAL RAILROAD COMPANY shall be fixed at Seven Million Two Hundred and Fifty Thousand Dollars ($7,250,000.00).

ARTICLE FIFTH.

The number of shares of the capital stock shall be Seventy-two Thousand Five Hundred (72,500) and the amount of each share of the stock shall be One Hundred Dollars ($100.00).

ARTICLE SIXTH.

The period of time during which the company shall remain in operation is not limited as to duration.

In testimony of our adoption of the foregoing Articles of Incorporation, witness our hands and seals this the twenty-second day of April, A. D. 1867.

JOHN H. MOORES, (Seal)
GEO. L. WOODS. (Seal)
S. ELLSWORTH,
By GEO. WOODS, Atty. (Seal)
I. R. MOORES, (Seal)
I. S. SMITH,
Per I. R. MOORES, Atty. (Seal)
E. N. COOKE,
Per I. R. MOORES, Atty. (Seal)
SAM'L A. CLARKE. (Seal)

(Fifteen cents in revenue stamps cancelled.)

STATE OF OREGON,
MARION COUNTY. } ss.

Be it remembered that on this the twenty-second day of April. A.D., 1867, personally came before me, a Notary Public in and for said County and State, the within named I. R. Moores, Geo. L. Woods, I. R. Moores, for himself and also as Attorney in Fact for each of the following named persons: J. S. Smith & E. N. Cooke and S. Ellsworth, by Geo. L. Woods, his Atty. and S. A. Clarke who severally acknowledged that they signed the within and foregoing instrument; in person or as Attorney, for the uses and purposes therein named.

In Witness Whereof, I have hereunto set my hand and Notarial Seal this the day and year above written.

C. S. WOODWORTH,
(Notarial Seal) Notary Public.

(Five cents in revenue stamps cancelled.)

(ENDORSED)

Articles of Incorporation of Oregon Central R. R. Co. Filed in the office of the Secretary of State this 22nd day of April, A.D. 1867.

I. R. MOORES,
Acting Secy. of State.

EXHIBIT NO. 4 TO STIPULATION.

CHAPTER 403.

An Act to Incorporate the Southern Pacific Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. That Henry D. McHenry, Wm. G. Duncan, Samuel E. Hill, Samuel M. Cox, Henry McHenry, Jr., and their associates and successors and assigns, be and they are hereby created and constituted a body corporate and politic, under the name of the Southern Pacific Company, and as such shall have perpetual succession, and be capable in law to purchase, grant, sell, or receive, in trust or otherwise, all kinds of personal and real property to such amount as the directors of said company may, from time to time, determine; and to contract and be contracted with, sue and be sued, plead and be impleaded, appear and prosecute to final judgments all suits or actions at law or in equity in all courts and places; and to have and use a common seal, and to alter the same at pleasure; and to make and establish such by-laws, rules, and regulations for the government of said company and the conduct of its business as said corporation or the stockholders therein shall deem expedient or necessary for the management of its affairs, not inconsistent with the constitution and laws of this State or of the United States; and generally to do and execute all acts, matters, and things which may be

deemed necessary or convenient to carry into effect the powers and privileges herein granted; *Provided* however, that said corporation shall not have power to make joint stock with, lease, own, or operate any railroad within the State of Kentucky.

SEC. 2. The said corporation is hereby authorized and empowered to contract for, and acquire by purchase or otherwise, bonds, stocks, obligations, and securities of any corporation, company, or association now existing, or hereafter formed or constituted, and bonds, obligations, and securities of any individuals, state, territory, government or local authorities whatsoever, and to enter into contracts with any corporation, company, or association, individuals, state, territory, government or local authorities, in respect of their bonds, stock obligations, and securities, or in respect of the construction, establishment, acquisition, owning, equipment, leasing, maintenance, or operation of any railroads, telegraphs, or steamship lines, or any public or private improvements, or any appurtenances thereof, in any State or Territory of the United States, or in any foreign country, and to buy, hold, sell, and deal in all kinds of public and private stocks, bonds and securities, and said corporation may borrow and loan money, issue its own bonds or other evidences of indebtedness, and sell, negotiate and pledge the same, to such amounts, upon such terms, and in such manner as may from time to time be determined by the directors of said corporation; and it may mort-

gage all or any part of its property, assets, and franchises to secure such bonds and the interest thereon, on such terms and conditions as shall on that behalf be prescribed by its board of directors.

SEC. 3. The capital stock of said corporation shall be one million dollars, divided into shares of one hundred dollars each; which shares shall be deemed personal property, and may be issued, transferred, and forfeited for non-payment in such manner as the board of directors of such corporation may determine; and no person shall be in anywise liable as a stockholder of said corporation after said capital stock to such amount of one million dollars shall have been paid in in cash, and a certificate to that effect signed and sworn to by the treasurer and a majority of the board of directors of said corporation shall have been filed in the office of the Secretary of State of this State; nor shall the said corporation, nor any of the officers or agents thereof, be thereafter bound to make any further returns or certificates: *Provided*, however, that if, after the payment of such capital stock, any part thereof shall be withdrawn for or refunded to any of the stockholders when the property of the corporation is insufficient or will be thereby rendered insufficient for the payment of all its debts, the stockholders receiving the same shall be bound and obliged to repay to said corporation or its creditors, the amount so withdrawn or refunded.

SEC. 4. Any two of the persons above named as corporators of said corporation may call the first meet-

ing for the organization of such corporation at such time and place as they may appoint, by mailing a proper notice of such meeting to each of such corporators at least ten days before the time appointed; and in case a majority of such corporators shall attend such meetings, either in person or by proxy, they may open books for the subscriptions to its capital stock; and whenever five hundred thousand dollars shall be subscribed and ten per cent of said subscriptions shall be paid in cash, the stockholders of said corporation may organize the same, and said corporation may proceed to business.

SEC. 5. Each share of stock entitle the holder thereof to one vote, in person or by proxy, at all meetings of the stockholders; the holders of a majority in interest of the capital stock, present in person or by proxy, shall constitute a quorum (the corporation shall have a lien on all the stock and property of its members invested therein for all debts due by them to said corporation, which lien may be enforced in such manner as the by-laws shall prescribe.)

SEC. 6. The stock, property, and affairs of said corporation shall be managed by a board of directors of such number, of not less than three, as may be from time to time determined by the corporators or stockholders. The directors shall be elected by the stockholders at such time and place, and in such manner, and for such terms, as the stockholders shall from time to time determine. Meetings of directors or stockholders may be held within or without the State. No person shall be

elected a director who is not a stockholder of the corporation. A majority of the directors shall constitute a quorum of said board for the transaction of business. The directors shall appoint from their own number a president, and they shall also appoint a clerk and treasurer, and such other officers and agents as they may deem proper, to hold their offices during the pleasure of the board. In case of a vacancy or vacancies in the board, the remaining directors may fill such a vacancy or vacancies. The capital stock of said corporation may be increased from time to time to such sum as may be determined by the board of directors of said corporation, provided such increase or diminution shall be approved by at least two-thirds in interest of the stockholders of said corporation.

SEC. 7. The annual tax upon said corporation shall be the same as is now fixed by law for broker's license. *Provided,* that all property owned by said corporation and situated in the State shall pay the same State and local tax as is assessed upon similar property; and capital stock in said corporation, owned by citizens of the State, shall be assessed against the holders thereof as choses in action under the equalization law.

SEC. 8. The Company shall keep an office for the transaction of business, and the clerk or assistant clerk of said corporation shall reside within the State of Kentucky; but the said corporation may keep offices at such places outside of this State as in the judgment of its board of directors its business may from time to time

require: *Provided,* that nothing herein contained shall be construed as granting any lottery or banking privileges.

SEC. 9. This act shall take effect immediately upon its passage.

Chas. Offutt,
Speaker of the House of Representatives.
James R. Hindman,
Speaker of the Senate.

Approved March 17, 1884:
J. Proctor Knott.
By the Governor:
Jas. A. McKenzie,
Secretary of State.

CHAPTER 601.

An Act to amend "An Act to incorporate the Southern Pacific Company," approved March seventeenth, eighteen hundred and eighty-four.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. That the Act entitled "An Act to incorporate the Southern Pacific Company," which was approved March seventeenth, eighteen hundred and eighty-four, be and the same is amended by adding to Section 1 thereof the following words, to wit: except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to railroads, and acquiring no special rights that may be possessed by any railroads in the state except the general and ordinary rights of common carriers as possessed by railroads generally.

SEC. 2. This Act shall take effect from its passage.

Ben Johnson, Speaker of the House of Representatives.

J. W. Bryan, Speaker of the Senate.

Approved March 21, 1888.

S. B. Buckner.

By the Governor:

Geo. M. Adams, Secretary of State.

EXHIBIT NO. 5 TO STIPULATION.

Articles of Association, of Amalgamation and Consolidation, Executed this twenty-second (22nd) day of June, A. D. 1870, by and between "The Central Pacific Railroad Company of California," party of the first part, and "The Western Pacific Railroad Company," party of the second part; both of the said railroad companies being railroad corporations duly organized under and in pursuance of the laws of the State of California.

Whereas, "The Central Pacific Railroad Company of California," was duly organized under and in pursuance of the laws of the State of California, by filing Articles of Association in the office of the Secretary of State of the State of California on June 28th, 1861, and amended Articles of Association on the 8th day of October, 1864, to construct, operate, and maintain a railroad and telegraph line through the Counties of Sacramento, Placer, and Nevada, in the State of California, "from the City of Sacramento, in the County of Sacramento, in said State, to the eastern boundary line of the State of California, at or near the place where said line crosses the Truckee River, and running through Roseville, at the junction of said railroad with the California Central Railroad, and by or near to New-Castle, Auburn, Neilsburg, Illinoistown, Gold Run, Dutch Flat, Bear Valley, Crystal Lake, Summit Valley, and Donner Pass, together with such branches and extensions of the said railroad as the Board of Directors of said company may at any time deem necessary or proper to construct, operate, and maintain, by the laws of the State of Cali-

fornia, or other States or Territories, or the Acts of the Congress of the United States, now in force, or which may hereafter be enacted."

And Whereas, by the provisions of an Act of the Congress of the United States, entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the Acts amendatory thereof, approved July 2, 1864, and March 3, 1865, the said "The Central Pacific Railroad Company of California" were authorized to locate and construct their road as aforesaid, and to locate, construct and continue the same eastward in a continuous completed line until it should meet and connect with the Union Pacific Railroad, and certain rights, powers, donations, grants, rights of way, privileges, and franchises were given and granted to them, to aid in the construction of their said railroad.

And Whereas, on the 23rd July, 1868, the said "The Central Pacific Railroad Company of California" increased the capital stock of the company from twenty million dollars to one hundred million dollars, the latter amount being necessary for the constructing, completing, operating, equipping, and maintaining said railroad and its extension.

And Whereas, under and in pursuance of the laws of the State of California, "The Western Pacific Railroad Company" was duly organized on the 11th day of

December, 1862, and on the 2nd day of November, 1869, the "San Francisco Bay Railroad Company," another corporation organized under and in pursuance of the laws of the State of California, amalgamated and consolidated its interests, capital stock, rights, privileges, and franchises with those of the said "The Western Pacific Railroad Company," and formed both of said companies into one new company and corporation, to be called and known as "The Western Pacific Railroad Company," the objects and purposes of which were to purchase, construct, own, maintain, and operate certain railroad and telegraph lines, so as to form a continuous line of railway and telegraph, "Commencing at a point on the Central Pacific Railroad and connecting therewith at or near the City of Sacramento, and running thence by way of Stockton and the several routes mentioned in the several Articles of Association of the said 'The Western Pacific Railroad Company' and of the said 'San Francisco Bay Railroad Company' to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the city of San Jose, and to the several other points therein mentioned, to wit: The City of San Francisco, 'Yerba Buena Island,' otherwise called 'Goat Island', and the point in the Bay of San Francisco between 'The Encinal' and the City of San Francisco. Also, to purchase, construct, own, maintain, and operate such branch and side lines and railroads between the said 'The Western Pacific Railroad' and such several points on the Bay of San Francisco as the Board of Directors of said new and consoli-

dated company may from time to time determine. The length of the said railroad and telegraph lines being, as near as may be, two hundred and twenty-three miles."

And Whereas, by the laws of the State of California it is made lawful for any two or more railroad companies to amalgamate and consolidate their capital stock, debts, property, assets and franchises, and they are authorized and empowered so to do in such manner as may be agreed upon by the Boards of Directors of such companies so desiring to amalgamate and consolidate their interests.

And Whereas, the Boards of Directors of the said railroad companies, parties of the first and second parts hereto, have agreed to amalgamate and consolidate the interests of said companies upon the terms, agreements, stipulations and conditions hereinafter set forth.

And Whereas, more than three fourths of the value of all the stockholders in interest of each of said companies, parties of the first and second parts hereto, give and have given their written consent to such amalgamation and consolidation upon the terms, agreements, stipulations and conditions hereinafter set forth.

The said companies, parties of the first and second parts hereto, therefore, hereby mutually covenant and agree to and with each other to the following articles, to-wit:

ARTICLE FIRST.

The said companies, parties hereto, agree to, and by these presents amalgamate and consolidate the cap stock, debts, property, assets and franchises of each said companies, the parties hereto of the first and sec part, into one company and corporation. And all capital stock, debts, property, assets, and franchises or to which said companies, the parties hereto, or eit of them, have any right, title, interest or claim, eithe possession or expectancy, at law or in equity, or wh may in any way relate or pertain to the said compan parties hereto, or either of them, are hereby amal mated, united, merged, and consolidated into one co pany and corporation.

ARTICLE SECOND.

The name of the said new and consolidated compa and corporation, hereby formed under these artic shall be and is, "Central Pacific Railroad Compan The said new company and corporation is to and sh continue in existence for the term and period of Fi Years from the date of these articles.

ARTICLE THIRD.

The objects and purposes of the said new and c solidated company and corporation are, to purcha construct, own, maintain, and operate the railroad a telegraph lines, hereinbefore described of said parties the first and second parts hereto, so as to form a c tinuous line of railway and telegraph from Ogden, in

Territory of Utah, to San Jose, in California, and to the waters of the Bay of San Francisco, to wit: Commencing at or near Ogden, in Utah, at the connecting point of the Central Pacific Railroad and Union Pacific Railroad, and running thence along the lines of the Central Pacific Railroad and the Western Pacific Railroad, by way of Sacramento and the several routes mentioned in the several Articles of Association of the said "The Central Pacific Railroad Company of California" and of the said "The Western Pacific Railroad Company," to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the City of San Jose, California, and to the several other points heretofore herein mentioned, to wit: The City of San Francisco,—"Yerba Buena Island," otherwise called "Goat Island,"—and the point in the Bay of San Francisco between "The Encinal" and the City of San Francisco. Also to purchase, construct, own, maintain, and operate such branch and side lines and railroads between the said "The Western Pacific Railroad" and such several points on the Bay of San Francisco, and between the said "The Central Pacific Railroad" and such several points on the Bay of San Francisco and the navigable waters thereof, as the Board of Directors of said new and consolidated company may, from time to time, determine. The length of the said railroad and telegraph lines being, as near as may be, one thousand (1,000) miles.

ARTICLE FOURTH.

The number of Directors, to manage the affairs of

the said new and consolidated company and corporation, shall be seven. The following named persons shall act as such Directors until others are duly elected, to wit: Leland Stanford, C. P. Huntington, Mark Hopkins, Charles Crocker, E. B. Crocker, E. H. Miller, Jr., and A. P. Stanford.

ARTICLE FIFTH.

The capital stock of the new and consolidated company and corporation is hereby fixed at one hundred million dollars, that being the actual and contemplated cost of constructing the said railroad and telegraph lines thus consolidated, including the cost of the right of way, motive power, and every other appurtenance and thing for the constructing, running, and operating of said railroad and telegraph lines, as nearly as can be estimated by competent engineers. The said capital stock shall consist of, and be divided into, one million (1,000,000) shares of one hundred dollars each.

ARTICLE SIXTH.

The holders and owners of the capital stock of each of the said several corporations, parties of the first and second parts hereto, shall be entitled to receive and hold an equal amount and number of the shares of the capital stock of the said new and consolidated company and corporation now held by them respectively, and shall be entitled to receive from the new and consolidated company and corporation certificates therefor upon the surrender of the certificates of stock issued by said several

parties of the first and second parts, or if their right to stock is otherwise evidenced, then upon surrender of such evidence that they are entitled to certificates from either of said parties.

ARTICLE SEVENTH.

And the said several parties of the first and second parts, each for itself, hereby sells, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation, its successors and assigns forever, all its property, real, personal, and mixed, of every kind and description; all its capital stock; all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues, and demands of every kind and description; and all rights, privileges, and franchises, corporate and otherwise, held, owned, or claimed by said parties of the first and second parts, or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims, and charges thereon, or in anywise affecting the same.

ARTICLE EIGHTH.

The said new and consolidated company and corporation is to be liable for and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second

parts; but this amalgamation and consolidation shall not in any way relieve the said parties to the first and second parts, or the stockholders thereof, from any and all just liabilities.

In Testimony Whereof, the said parties of the first and second parts have severally caused these presents to be executed in duplicate, and each instrument to be signed by their respective Presidents and Secretaries, and the corporate seals of the said party of the first part, and of the said party of the second part to be hereunto affixed, in pursuance of Orders and Resolutions of their several Boards of Directors made the twenty-second (22nd) day of June, A. D. 1870.

(Stamp.)
(Stamp.)
C. P. R. R. Co. Seal.

The Central Pacific Railroad Co. of California,
By Leland Stanford,
President.
and E. H. Miller, Jr.,
Secretary.

(Stamp)
(Stamp)
W. P. R. R. Co. Seal.

The Western Pacific Railroad Co.,
By Leland Stanford,
President,
and E. H. Miller, Jr.,
Secretary.

We the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said "The Central Pacific Railroad Company of California," party of the first part to the foregoing new Articles of Association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation, and to the said new articles of Association, this twenty-second day of June, A. D. 1870.

Leland Stanford.
Charles Stanford.
By Leland Stanford, his Att'y in fact.
Mark Hopkins.
C. P. Huntington.
by Mark Hopkins, Att'y in fact.
C. Crocker.
E. B. Crocker, Att'y in fact.
E. H. Miller, Jr.
C. S. Scudder.
A. P. Stanford,
By Leland Stanford, Att'y in fact.
B. B. Crocker.
D. O. Mills & Co.
Albert Gallatin.
W. R. S. Foye.
C. H. Cummings.
I. E. Hollister.
Julius Wetzlar.
J. S. Friend.
Friend & Terry.
W. E. Terry.

We the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said "The Western Pacific Railroad Company," party of the second part to the foregoing new Articles of Association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation, and consolidation and to the said new Articles of Association, this twenty-second day of June, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington,
By Mark Hopkins, Att'y in fact.
C. Crocker.
E. B. Crocker
By C. Crocker, Att'y in fact.
E. H. Miller, Jr.
A. P. Stanford.
By Leland Stanford, Att'y in fact.
C. H. Cummings.

No. 16.

State of California—Department of State.

I, L. H. Brown, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association of Amalgamation and Consolidation—Central Pacific Railroad Company, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 15th day of November, A. D. 1895.

(Seal.)

L. H. Brown,
Secretary of State.
By W. T. Sesnon,
Deputy.

(Endorsed:) 40, Central Pacific Railroad Company. Articles of Consolidation of the Central Pacific Railroad Company of California with the Western Pacific Railroad Company.

(Endorsed:) Filed in office of Secretary of State June 23rd, 1870, H. L. Nichols, Secretary of State. By Lew B. Harris, Deputy.

EXHIBIT NO. 6 TO STIPULATION.

Articles of Association, Amalgamation, and Consolidation, Made and executed on this the twentieth day of August, A. D. 1870, by and between the Central Pacific Railroad Company, of the first part; the California and Oregon Railroad Company, of the second part; the San Francisco, Oakland, and Alameda Railroad Company, of the third part, and the San Joaquin Valley Railroad Company, of the fourth part, all of said parties being Railroad corporations duly incorporated, organized, and existing under and by virtue of the laws of the State of California.

Witnesseth: That Whereas, The said party of the first part was duly incorporated and organized for the purpose of constructing, owning, maintaining, and operating a continuous line of railway and telegraph from Ogden, in the Territory of Utah, to San Jose, in California, and to the waters of the Bay of San Francisco, to wit: Commencing at or near Ogden, in Utah, at the point of Junction with the Union Pacific Railroad, running thence west to the eastern boundary of the State of Nevada, at the town of Toano, thence west across the State of Nevada, to the eastern boundary of the State of California, at the Donner Pass through the Sierra Nevada Mountains, passing through the towns of Elko, Carlin, Argenta, Winnemucca, Wadsworth, Reno, and intermediate points in the State of Nevada, to the town of Truckee, in the State of California; thence west, passing the towns of Cisco, Alta, Auburn, Roseville, Sacramento, Stockton, and intermediate points, to Niles Sta-

tion, in Alameda County in the State of California; thence to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the city of San Jose; also extending from said Niles Station to the city of Oakland, the city of San Francisco, Yerba Buena Island, otherwise called Goat Island, and the point in the Bay of San Francisco between The Encinal and the city of San Francisco; also to purchase, construct, own, maintain, and operate such branch and side lines and railroads between the said railroad and such points on the Bay of San Francisco and the navigable waters thereof as the Board of Directors of said company may from time to time determine; the length of said railroad and telegraph being, as near as may be, one thousand (1,000) miles.

And Whereas, The said party of the second part was duly incorporated and organized for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad and telegraph, commencing at Roseville, in the County of Placer and State of California, and there connecting with the railroad of the party of the first part, hereinbefore described, running thence north through the towns of Marysville and Chico, to the northern boundary of the State of California, by such route and to such point on said boundary as may be selected by its Board of Directors, with such extensions into the State of Oregon as said Board may deem proper under and by virtue of a certain Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and tele-

graph line from the Central Pacific Railroad in California to Portland, in Oregon, approved July 25th, 1866," and with the power or right to change the southern terminus to some other point on the said Central Pacific Railroad between said town of Roseville and the bridge crossing the American River, near the city of Sacramento, whenever its Board of Directors may deem proper; the length of said railroad and telegraph in the State of California, being, as near as may be, three hundred and thirteen miles.

And Whereas, The said party of the third part was duly incorporated and organized for the purpose of purchasing, constructing, owning, maintaining, and operating a continuous line of railway from the City and County of San Francisco, through the City of Oakland and through a point on the easterly part thereof, in Alameda County to a point on the line of the railroad, formerly known as the San Francisco and Alameda Railroad, at or near Fruit Vale Station, in said county of Alameda; and also a continuous line of railroad from the extreme western point of the Encinal of San Antonio, in the county of Alameda, passing through said county of Alameda to a point on the Western Pacific Railroad (now a part of the railroad of the said party of the first part), at or near Haywards, in said county of Alameda and State of California; also, for the purpose of purchasing, constructing, owning, maintaining, and operating such branch and side lines and railroads, between the said railroad and such several points on the Bay of San Francisco, as its Board of Directors may,

from time to time, determine; the length of said railroad, being, as near as may be, twenty-five miles.

And Whereas, The said party of the fourth part was duly incorporated and organized for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Western Pacific Railroad (now a part of the railroad of the said party of the first part), at or near the city of Stockton, in the county of San Joaquin, in the State of California, and between said city and the crossing of the San Joaquin River, to a point on Kern River, in the County of Tulare, in said State; said points to be selected by its Board of Directors; said road passing through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare; the length, being, as near as may be, three hundred miles.

And Whereas, Said parties believe a consolidation and amalgamation of their capital stock, debts, properties, assets, roads, telegraph, lands, and franchises will be mutually advantageous.

And Whereas, More than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth.

Now Therefore, Under and by virtue of the statute in such case made and provided, the said parties do hereby mutually covenant and agree each with each and all

the others to the following articles, to wit:

ARTICLE FIRST.

Said parties do hereby amalgamate and consolidate themselves a new corporation under the name and style of the "Central Pacific Railroad Company" which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as expectancy, at law or in equity, and do grant, convey and vest the same in said new corporation as fully as the same are now severally held and enjoyed by them or either of them subject however to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims and charges thereon, or in any wise affecting the same.

ARTICLE SECOND.

The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate all and each of the railroad and telegraph lines hereinbefore described for the period hereinbefore stated.

ARTICLE THIRD.

The Board of Directors of said new corporation shall consist of seven persons and the following named persons shall act as such Directors until their successors

shall have been duly elected pursuant to the by-laws of said new corporation hereinafter to be adopted, viz: Leland Stanford, William E. Brown, Mark Hopkins, Collis P. Huntington, Charles Crocker, Edward H. Miller, Jr. and Charles H. Cummings.

ARTICLE FOURTH

The capital stock of said new corporation shall be one hundred million dollars, consisting of one million shares of one-hundred dollars each, that sum being the contemplated actual cost of said railroad and telegraph lines, including rolling stock, motive power, depots, etc.

ARTICLE FIFTH.

Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, and shall be entitled to receive from said new corporation, certificates therefor upon the surrender of the certificates now held by him, or such other evidence of his ownership as he may now have, if no certificates have been issued to him by the company of which he is now a stockholder.

ARTICLE SIXTH.

Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations of what kind soever of each of the said parties, and shall pay and discharge all debts, claims, and demands, existing against either and all of said parties;

but nothing herein contained shall release the said parties or either of them or their stockholders, or any of them from any of their just liabilities.

In testimony whereof the said parties have severally caused these articles to be signed and executed by affixing thereto their respective corporate names and seals, by their respective Presidents and Secretaries pursuant to the orders of their respective Boards of Directors heretofore made on the day and year first above written.

Central Pacific Railroad Company,
(C. P. R. R.) By Leland Stanford, President,
(Seal) and by E. H. Miller, Jr., Secretary.

(C. & O.) California and Oregon Railroad Company,
(R. R.) By Leland Stanford, President,
(Seal) and by E. H. Miller, Jr., Secretary.

San Francisco, Oakland and Alameda Railroad,
(S. F. O. &) Company,
(A. R. R.) By Alfred A. Cohen, President,
(Seal) and by H. Lacy, Secretary.

(S. J. V.) San Joaquin Valley Railroad Company,
(R. R.) By Leland Stanford, President,
(Seal) and by E. H. Miller, Jr., Secretary.

The undersigned, being holders of more than three-fourths in value, of the capital stock of the Central Pacific Railroad Company, party of the first part in and to the foregoing articles, do hereby consent to the terms and conditions therein contained.

Done this sixteenth day of August, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington,
By Mark Hopkins, Att'y in fact.

C. Crocker.
E. B. Crocker.
By C. Crocker, Att'y in fact.

W. E. Brown.
E. H. Miller, Jr.
C. H. Cummings.

The undersigned, being holders of more than t
fourths in value, of the capital stock of the Calif
and Oregon Railroad Company, party of the se
part in and to the foregoing articles, do hereby co
to the terms and conditions therein contained.

Done this the sixteenth day of August, A. D. 187

Leland Stanford.
Mark Hopkins.
C. P. Huntington,
By Mark Hopkins, Att'y in

C. Crocker.
E. B. Crocker.
By C. Crocker, Att'y in fac

E. H. Miller, Jr.
B. B. Redding.

The undersigned, being holders of more than t
fourths, in value, of the capital stock of the San F
cisco, Oakland and Alameda Railroad Company, p
of the third part in and to the foregoing articles
hereby consent to the terms and conditions therein
tained.

Done this the sixteenth day of August, A. D. 1

Alf. A. Cohen.
D. O. Mills.
F. D. Atherton.
D. P. Barstow.
W. C. Ralston.

The undersigned, being holders of more than three-fourths, in value, of the capital stock of the San Joaquin Valley Railroad Company, party of the fourth part in and to the foregoing articles, do hereby consent to the terms and conditions therein contained.

Done this the sixteenth day of August, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington.
By Mark Hopkins, Att'y in fact.

C. Crocker.
E. B. Crocker.
By C. Crocker, Att'y in fact.

E. H. Miller, Jr.
B. B. Redding.
C. H. Cummings.

No. 17.

State of California—Department of State.

I, L. H. Brown, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association, Amalgamation and Consolidation of the Central Pacific Rail Road Company, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 15th day of November, A. D. 1895.

L. H. Brown,
Secretary of State.
By W. T. Sesnon,
Deputy.

(Seal)

(Endorsed:) No. 41. Articles of Consolidation by and between The Central Pacific Railroad Co. The California and Oregon R. R. Co. The San Francisco, Oakland and Alameda Railroad Co., and The San Joaquin Valley Railroad Co.

(Endorsed:) Filed in office of the Secretary of State August 22d, 1870. H. L. Nichols, Sec'y of State. By Lew B. Harris, Deputy.

EXHIBIT NO. 7 TO STIPULATION.

An Indenture and Agreement, made and entered into the twenty-ninth day of July, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railroad Company, a corporation created, organized and existing under the laws of the State of California, and invested with certain rights and franchises by and under the laws of the United States of America, and by and under the laws of the States of Utah and Nevada, party of the first part, and the Central Pacific Railway Company, a corporation created, organized and existing under and by virtue of the laws of the State of Utah, of the second part:

Whereas, the party of the first part is the owner of the lines of railroad, the railways and other properties, rights, privileges and franchises, and the lands and notes and securities and moneys, hereinafter in the granting clause hereof described or referred to; and,

Whereas, certain portions of the said lines of railroad and railways and their appurtenances, and said lands, owned by the said party of the first part, are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California First Mortgage Bonds, secured by mortgage

dated July 25, 1865, of the several series and
amounts and now matured or maturing at the
hereinafter stated, respectively, viz:

Series.	Amount.	Date of Ma
Series A	$2,995,000	Matured.
B	$ 1,000	Matured.
	$ 999,000	December 1,
C	$ 4,000	Matured.
	$ 996,000	December 1,
D	$ 4,000	Matured.
	$1,379,000	December 1,
Total	$6,378,000	

(b) The Central Pacific Railroad Compa
California First Mortgage Bonds, secured by mo
dated January 1, 1867, of the several series a
the amounts and now matured or maturing at th
hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of Ma
Series E	$ 5,000	Matured
	$ 3,990,000	June 1,
F	$ 9,000	Matured
	$ 3,990,000	June 1,
G	$ 13,000	Matured
	$ 3,985,000	June 1,
H	$ 6,000	Matured
	$ 3,993,000	June 1,

I { $ 13,000.....Matured.
{ $ 3,498,000.....June 1, 1901.

Total.....$19,502,000

(c) The Western Pacific Railroad Company First Mortgage Bonds, secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for $1,970,000.....Matured July 1, 1899.
B " 765,000..... " " " "

Total $2,735,000

(d) The California and Oregon Railroad Company, and Central Pacific Railroad Company, successors, First Mortgage Bonds, secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for $5,982,000..Maturing January 1, 1918.
B " $4,385,000.. " " " "

Total ...$10,340,000

(e) The Central Pacific Railroad Company First Mortgage Bonds (San Joaquin Valley Division), secured by mortgage dated October 1, 1870, for the amount of $6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds, secured by mortgage dated April 1, 1889, to the amount of $12,283,000, maturing April 1, 1939, of which bonds the amount of $2,038,000

are held as security for the Land Bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company Land Bonds, secured by mortgage dated October 1, 1870, to the amount of $2,134,000 and maturing October 1, 1900.

And, Whereas, heretofore and under date of February 1, 1899, the said party of the first part (in pursuance of a Settlement Agreement between the United States of America, the said party of the first part, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an Act of Congress, approved July 7, 1898) executed its twenty promissory notes in favor of the United States of America for $2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof; and,

Whereas, the said party of the first part is also indebted to the holders of its bonds to the amount at their face value of $56,000, bearing date October 1, 1886, and payable October 1, 1936, with six per cent. interest, payable semi-annually, commonly known and referred to as "Fifty-year Bonds of 1936."

And, Whereas, under and by virtue of authority from the States of California, Utah and Nevada, the party of the first part has sold to the party of the second part hereunder, subject to the liens now existing thereon, and upon and subject to the terms and conditions here-

inafter prescribed, all the lines of railroad, railways and other properties and rights, privileges and franchises, and lands, notes, securities and moneys hereinafter in the granting clause hereof described and referred to, and any and all other properties, claims, demands, choses in action, rights, privileges and franchises of the said party of the first part:

Now, Therefore, This Indenture Witnesseth, That, in consideration of one dollar, which, simultaneously with the execution hereof, has been paid by the party of the second part to the party of the first part, the receipt whereof by said party of the first part is hereby acknowledged, and for and in consideration of the undertakings, covenants and agreements on behalf of the said party of the second part hereinafter contained, said party of the first part has granted, bargained, sold, conveyed, assigned, transferred and set over, and hereby grants, bargains, sells, conveys, assigns, transfers and sets over, unto the party of the second part:

First. The lines of railroad owned by the party of the first part, extending from a point about five miles west of Ogden, in the State of Utah, through the States of Utah, Nevada and California, to and into the City of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last mentioned State, and from Niles to Oakland, and from Lathrop to Goshen, all in the State of California, and from Roseville, in said State of California, to the California and Oregon boundary; also the leasehold of the railroad from

a point about five miles west of Ogden to Ogden, in the County of Weber in the State of Utah.

Second. All the railways belonging to the party of the first part in San Francisco, Oakland and Alameda, in the State of California, and the terminals belonging to the party of the first part, used in connection therewith, including wharves, piers, docks, embankments, ferries, steamers and transfer and ferryboats.

Third. All roadbeds, superstructures, rights of way, rails, tracks, side tracks, bridges, viaducts, terminals, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turntables, water stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind, now owned by the party of the first part, which shall in anywise, or at any time, belong or appertain to or be provided for use upon, or for the purpose of, any of said lines of railroad, and any and all other property, real or personal, of every kind and description, now owned by the party of the first part, for use upon or for the purposes of such lines of railroad or terminals, or any of them.

Fourth. Any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels of the party of the first part now owned for use upon any of such lines of railroad or terminals or other property.

Fifth. Any and all other railroads, equipment and terminals owned by the party of the first part.

Sixth. Any and all corporate or other rights, privileges and franchises which the party of the first part now has or hereafter shall acquire, possess or become entitled to, for, or appertaining to, the construction, maintenance, use or operation of such lines of railroad or terminals or other property.

Seventh. Any and all the rents, issues, profits, tolls, and other income of such lines of railroad or terminals or other property.

Eighth. All and singular the several sections of land granted by the United States to the Central Pacific Railroad Company of California by an Act of Congress approved on the first day of July, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes.", and an act amendatory thereof, approved on the second day of July, 1864, also all the lands granted to the California and Oregon Railroad Company by an Act of Congress approved on the twenty-fifth day of July, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."; and also all the estate, right, title, interest claim and demand whatsoever, at law or in equity, of, in or to the same

or any part or parcel thereof, which the said party of the first part now has, holds, owns or is entitled to, or hereafter may or shall acquire, have, hold, own or be or become entitled to by force or virtue of the said Acts of Congress, saving and excepting all parts and parcels of said lands which were sold prior to the execution of the mortgage from the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, dated the first day of October, A. D. 1870, securing the Land Bonds of said last-mentioned Company, and all such parts and parcels of said lands as shall have since been released from the said mortgage securing such Land Bonds in accordance with the provisions thereof.

Ninth. All notes now outstanding given in payment for lands covered by such mortgage of the Central Pacific Railroad Company, dated October 1, 1870, securing said Land Bonds.

Tenth. All securities and moneys which are held in any sinking fund created or existing by or under any mortgage existing on the 20th day of February, 1899, whether of the party of the first part or any divisional company by the consolidation whereof it was formed.

Eleventh. All other properties, claims, demands, moneys, choses in action, leaseholds, rights, privileges and franchises owned by or belonging to the party of the first part, or to which it is in any wise entitled.

To Have and to Hold, the premises, railroads, railways, properties real or personal, claims, demands, choses in action, leaseholds, rights, privileges, franchises, estates and appurtenances, lands, land notes and scurities and moneys hereby granted, bargained, sold, conveyed, assigned, transferred or set over, or intended so to be, unto the party of the second part and to its successors and assigns forever, but subject to the liens thereon hereinbefore mentioned and referred to.

And in further consideration hereof, and in order to provide for the readjustment of the present funded indebtedness of the party of the first part (subject to which the properties of said party of the first part are hereby conveyed), and for the purpose of securing the payment of the amounts becoming due on the notes given by said party of the first part to the United States under said Settlement Agreement, dated February 1, 1899, as in said Settlement Agreement prescribed, the party of the second part has assumed and hereby assumes the payment of all the indebtedness and guaranties of the said party of the first part, and has undertaken, covenanted and agreed, and hereby undertakes, covenants and agrees to and with the party of the first part that it will issue stocks and securities and execute mortgages as prescribed in the Central Pacific Readjustment Plan and Agreement dated February 8, 1899, issued by Speyer & Co., Speyer Brothers, Laz Speyer Ellissen, Teixeira de Mattos Brothers and the Deutsche Bank of Berlin, as Readjust-

ment Managers, or as the same may be modified under the terms thereof and with the assent of the party of the second part, and in a certain Agreement bearing date the 20th day of February, one thousand eight hundred and ninety-nine, by and between F. G. Banbury, Esq., M. P., John B. Akroyd, Esq., Lord Alwyn Compton, M. P., Daniel Marks, Esq., and Joseph Price, Esq., as the London Committee of Central Pacific Shareholders, Messrs. Speyer & Company of New York, Messrs. Speyer Brothers of London, Mr. Laz Speyer Ellissen of Frankfort-on-the-Main, Messrs. Teixeira de Mattos Brothers of Amsterdam, and the Deutsche Bank of Berlin, as Readjustment Managers as therein stated, and the Southern Pacific Company, and in a certain other Agreement bearing date the 1st day of March, one thousand eight hundred and ninety-nine, by and between August Belmont, Esq., Hon. John G. Carlisle and George Coppell, Esq., as the American Committee of Central Pacific Share-Holders, the said Readjustment Managers and the Southern Pacific Company, and, under arrangements made or to be made with said Readjustment Managers will carry out such Readjustment Plan and said Agreements.

In Witness Whereof, the parties hereto have caused these presents to be signed on their behalf respectively by their respective Presidents, and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries, the day and year first above written.

Central Pacific Railroad Company,

(Seal of Central) By
(Pacific Railroad) Isaac L. Requa,
(Company.) President.
Attest:

W. M. Thompson,
Secretary.

Central Pacific Railway Company.

(Seal of Central) By
(Pacific Railway) Thomas Marshall,
(Company.) President.
Attest: David B. Hempstead,
Secretary.

State of California, }
City and County of San Francisco. } ss.:

On this 29th day of July, A. D. 1899, before me, E. B. Ryan, a Notary Public in and for the City and County of San Francisco, duly commissioned and sworn, personally appeared Isaac L. Requa, known to me to be the President, and W. M. Thompson, known to me to be the Secretary, of the Central Pacific Railroad Company, the corporation described in and who executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and fixed my official seal at my office, in the City and

County of San Francisco, the day and year in this certificate first above written.

E. B. Ryan,

(Notarial Seal) Notary Public,

In and for the City and County of

San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.:

On the 29th day of July, A. D. 1899, personally appeared before me Isaac L. Requa, who, being by me duly sworn, did say that he is the President of the Central Pacific Railroad Company, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by resolution of its Board of Directors, and said Isaac L. Requa acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, in said City and County of San Francisco, on this 29th day of July, A. D. 1899.

E. B. Ryan,

(Seal) A Commissioner of Deeds for the State of Utah, residing in the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.:

On this 29th day of July, A. D. one thousand eight hundred and ninety-nine (1899), before me, E. B. Ryan, a Commissioner of Deeds for the State of Nevada, duly appointed, commissioned and sworn, residing in the City and County of San Francisco and State of California, personally appeared the within-named Isaac L. Requa, President of the Central Pacific Railroad Company, and W. M. Thompson, Secretary of the Central Pacific Railroad Company, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said Company, and they each severally and personally then and there acknowledged to me that they executed the said within instrument as the free act and deed of the said Central Pacific Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal as such Commissioner, at my office in said City and County of San Francisco, the day and year last above written.

E. B. Ryan,

(Seal) A Commissioner of Deeds for the State of Nevada, residing in San Francisco, California.

State of Utah,
County of Salt Lake. } ss.:

On this 31st day of July, A. D. 1899, before me, Lula Geoghegan, a Notary Public in and for the County of Salt Lake, State of Utah, duly commissioned and qualified, personally appeared Thomas Marshall, known to me to be the President, and David B. Hempstead, known to me to be the Secretary, of the Central Pacific Railway Company, the corporation described in and which executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of Salt Lake, State of Utah, the day and year first above written.

Lula Geoghegan,
(Notarial Seal) Notary Public.
My Commission expires September 17, 1901.

State of Utah,
County of Salt Lake. } ss.:

On this 31st day of July, A. D. 1899, personally appeared before me, Thomas Marshall and David B. Hempstead, who, being by me respectively duly sworn, each for himself says that the said Thomas Marshall is the President of the Central Pacific Railway Company, and the said David B. Hempstead is the Secretary of

said Company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said President and Secretary, respectively, under and in pursuance of a resolution of its Board of Directors; and the said Marshall and Hempstead respectively acknowledge to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, in said County of Salt Lake, State of Utah, on this 31st day of July, A. D. 1899.

Lula Geoghegan,

(Notarial Seal) Notary Public.

My Commission expires September 17, 1901.

State of Utah, }
County of Salt Lake. } ss.:

On this 31st day of July, A. D. 1899, before me, Lula Geoghegan, a Notary Public in and for the County of Salt Lake, State of Utah, duly appointed and qualified, personally appeared the within-named Thomas Marshall, President of the Central Pacific Railway Company, and David B. Hempstead, Secretary of the said Central Pacific Railway Company, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said Company, and they each severally and personally then and there acknowledged to me that he executed the said instrument as

the free act and deed of the said Central Pacific Railway Company freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal as such Notary Public, at my office in said County of Salt Lake and State of Utah, the day and year last above written.

Lula Geoghegan,
(Notarial Seal.) Notary Public.
My Commission expires September 17, 1901.

EXHIBIT NO. 8 TO STIPULATION.

State of Utah, }
County of Salt Lake. } ss.:

Know all Men by these Presents:

The we, the undersigned, whose names are hereunto subscribed, do hereby certify and declare that we have, under and in pursuance of an Act of the legislature of the State of Utah, entitled "An Act to provide for the formation of railroad corporations, for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances, authorizing the issue of bonds, making deeds of trust and mortgages and defining the rights and powers of such corporations," approved January 22, 1897, and the other laws of the State of Utah applicable thereto, associated ourselves together as a corporation for the

purpose of buying, owning, maintaining, operating and further extending the railroads, rights, property and franchises hereinafter described, and we further certify and declare that we have adopted and do hereby adopt the following

ARTICLES OF ASSOCIATION.

Article 1. The corporate name of the corporation hereby formed shall be "Central Pacific Railway Company." By that name the persons subscribing these Articles of Association, and all persons who may from time to time become shareholders in the corporation hereby formed, shall have perpetual succession, with power to adopt a common seal, sue and be sued, to acquire, hold, mortgage and convey property; to make contracts, fix and prescribe tariffs and rates of compensation for the carriage of persons and property, and generally to do all acts necessary or proper to carry into effect the powers and purposes of said corporation.

Art. 2. Said corporation shall continue in existence for the period of fifty years from the date of the filing of these Articles of Association in the office of the Secretary of State of the State of Utah.

Art. 3. Said corporation shall possess all of the powers, rights and franchises specified, referred to or provided for in these Articles of Association; and, also, all of the powers which, by said Act above entitled, approved January 22, 1897, and such other laws of the

State of Utah, corporations formed under, and pursuant to, the said Act and laws, are entitled to have, possess and enjoy as fully as if all of the provisions of the said Act in this behalf were herein set forth at large; and, also, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, or under the laws of other States or Territories of the United States, as hereinafter provided.

Art. 4. The amount of the capital stock of the said corporation shall be eighty-seven million two hundred and seventy-five thousand five hundred dollars ($87,275,500), which shall be divided into and represented by eight hundred and seventy-two thousand seven hundred and fifty-five (872,755) shares of the par value of one hundred dollars ($100) cash, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such Capital Stock two hundred thousand (200,000) shares of one hundred dollars ($100) each may be issued as Preferred Stock, and six hundred and seventy-two thousand seven hundred and fifty-five (672,755) shares of one hundred dollars ($100) each may be issued as Common Stock.

Such Preferred Stock shall be entitled, in preference and priority over the Common Stock of said corporation, to accumulative preferential dividends from August 1, 1899, up to four per cent. per annum gold, payable semi-annually, out of net profits of the corporation, as the

same shall be declared by the Board of Directros thereof, and shall be entitled to a preference and priority over said Common Stock in respect of capital in case of liquidation or dissolution. Subject to the preferential rights above described, dividends up to four per cent. per annum out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, shall be paid upon the Common Stock of the corporation, and the balance of dividends payable out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, shall be paid *pro rata* upon the Preferred and Common Stock. The Directors may adopt proper by-laws to carry into effect the provisions of this article.

Art. 5. The number of Directors to manage and control the affairs of this corporation shall be seven, a majority of whom shall be sufficient to form a quorum for the transaction of business. The names and residences of those who shall serve as Directors for the first year and until their successors are chosen and qualified, are

Thomas Marshall,	Salt Lake City, Utah.
Jonathan C. Royle,	Salt Lake City, Utah.
David B. Hempstead,	Salt Lake City, Utah.
Douglas O. Morgan,	New York City, N.Y.
Henry Ruhlender,	New York City, N.Y.
Charles J. Dodd,	New York City, N.Y.
Richard R. Rogers,	New York City, N.Y.

Art. 6. The said corporation is organized and formed for and shall have the power to purchase, own, hold, enjoy, maintain, operate and further extend the railroads, property, rights and franchises, or any part thereof, belonging to the Central Pacific Railroad Company, a corporation heretofore organized under the laws of the State of California and invested with franchises under Acts of Congress of the United States, and under the laws of the States of Utah and Nevada.

The said corporation hereby formed shall have the power to acquire, possess and enjoy the lands and land grants, or any part thereof, and all rights with respect thereto, of the said Central Pacific Railroad Company or any or either of its constituent companies; and the said corporation hereby formed shall have the power to construct or acquire by lease, purchase, consolidation, ownership of capital stock or otherwise, branches, extensions and connecting or auxiliary lines, within or without this State, as the Board of Directors may from time to time deem expedient and as may be authorized by law.

The termini of the said railroad which the said corporation hereby formed is authorized to acquire, enjoy and operate as now constructed, and the States and counties through which the said railroad passes, are as follows, to wit:

The railroads extending from a point about five miles west of Ogden, in the County of Weber, in the State of Utah, through the Counties of Weber and Box

Elder, in said State of Utah, and the Counties of Elko, Eureka, Lander, Humboldt, Churchill, Lyon and Washoe, in the State of Nevada, and the Counties of Sierra, Nevada, Placer and Sacramento in the State of California, to and into the City of Sacramento, in said last-mentioned county and state; and from said Sacramento through the Counties of Sacramento, San Joaquin, Alameda and Santa Clara in the State of California, to San Jose in the last-mentioned county and State; and from Niles in the County of Alameda and State of California, through the County of Alameda, in the State of California, to Oakland, in said last-mentioned county and state, and from the Water Front to Mission Bay, in the City and County of San Francisco, in said State; and from Lathorp, in the County of San Joaquin, in the State of California, through the Counties of San Joaquin, Stanislaus, Merced, Madera, Fresno and Tulare, in the State of California, to Goshen, in said last-mentioned county and state; and from Roseville in the County of Placer, in the State of California, through the Counties of Placer, Yuba, Sutter, Butte, Tehama, Shasta and Siskiyou, in said State of California, to the boundary between the States of California and Oregon in the last-mentioned county; also the leasehold of the railroad from a point about five miles west of Ogden to Ogden, in the county of Weber, in the State of Utah.

The railroads situated in the Cities of Oakland and Alameda, in the County of Alameda, in the State of California, between the following termini, that is to say:

(1) From a point in the City of Oakland, County of Alameda and State of California, on the line hereinbefore described, running from Niles to Oakland, and near the intersection of First and Broadway Streets, curving towards and crossing the Estuary of San Antonio, to the City of Alameda in said county and State; thence running northeasterly through the City of Alameda, via Masticks Station, to the junctions with said first-mentioned line at Fruitvale, and Melrose Stations, and also from Masticks Station aforesaid, via Pacific Avenue, to the shore of the Bay of San Francisco.

(2) From Brooklyn Station upon said line from Niles to Oakland westerly through said City of Oakland, via Seventh Street, to the shore of the Bay of San Francisco.

(3) From a point of junction of the Oakland Mole of said line from Niles to Oakland with the wharf known as "Long Wharf," to the western end of said wharf.

The said railroads above described being the railroads which, on the 28th day of July, 1899, were the property of the Central Pacific Railroad Company herein referred to, and being 1,367.78 miles in length.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire and maintain.

Art. 7. The corporation hereby formed shall be vested with, and entitled to exercise and enjoy, all the powers, rights, privileges and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, belonged to, or were vested in, the Central Pacific Railroad Company, or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid Act of the Legislature of the State of Utah, approved January 22, 1897, and said other laws of the State of Utah; and said corporation shall also possess in each State or Territory, as respects its railroads, or any branches or extensions thereof situate therein, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of such State or Territory, or of the United States.

Art. 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting lines within or without this State, and for such purposes or any of them, as well as the purchase or acquisition of the railroads described in Article 6 hereof, may from time to time create and issue its stock, Common or Preferred, or both, and execute bonds and mortgages, for such sum or sums, and payable at such times and places, and drawing such rate of interest, as the Directors may deem proper; and may use such stock

and bonds, or any part thereof, in payment of property to be purchased by such corporation, or the improvement or extension thereof, upon such terms, as the Directors may deem expedient; may guarantee the bonds or obligations of extensions, branches, or connecting or auxiliary lines of railroad; and in exercising its corporate powers, it may make such leases, purchases, contracts, conveyances and consolidations, and do such acts, as the Directors may deem necessary or expedient, not inconsistent with these articles or with the Constitution and laws of the State of Utah. The company hereby formed may also consolidate with or merge itself into any other railway company or companies in this or other States or Territories, pursuant to law; it may also from time to time mend these Articles of Association by filing amended Articles of Association, increasing the capital stock, or otherwise, agreeably with law, enlarging or changing the powers of the corporation hereby formed.

Art. 9. The Board of Directors of said corporation may from time to time adopt and change by-laws not inconsistent with the provisions of these articles or the Constitution and laws of the State of Utah. Said by-laws shall provide for annual elections of Directors by the stockholders, and for the election by the Directors of a President and Vice-President, and for the election or appointement of such other Vice-Presidents or other officers as shall be prescribed in such by-laws. Shareholders' or other corporate meetings may be held at such place or places in the United States as the by-laws may prescribe.

Art. 10. Stockholders shall not be individually liable for the debts of the corporation.

In Testimony Whereof, We have hereunto subscribed our names this twenty-sixth day of July, 1899.

Charles Steele.
Thomas Marshall.
Robert C. Chambers.
Jonathan C. Royle.
David B. Hempstead.
John E. Dooly.
Geo. B. Brastow.
Harry T. Duke.
George M. Downey.
Douglas O. Morgan.

State of Utah,
County of Salt Lake. } ss.:

On this 26th day of July, 1899, before me, the undersigned, Notary Public, personally appeared Charles Steele, Jonathan C. Royle, Thomas Marshall, David B. Hempstead, Harry T. Duke, John E. Dooly, George B. Brastow, George M. Downey, Douglas O. Morgan and Robert C. Chambers, to me known, and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they acknowledged to me that they signed the foregoing Articles of Association for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Lula Geoghegan,
Notary Public.

(Notarial Seal)

My Commission expires Sept. 17, 1901.

To the Central Pacific Railway Company.

I, *James T. Hammond,* Secretary of State of the State of Utah, do hereby certify, that on the Twentyninth day of July 1899 was filed in my office, the Articles of Association of said Association that said articles contain the statement of facts required by law, and that said Corporation is hereby constituted a body corporate, with right of succession as specified in its said articles of agreement, and is hereby authorized to exercise all the functions, enjoy all the privileges of a Corporation, and to transact al business of said Corporation, as specified in its said Articles of Association.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of said State at Salt Lake City, this Twenty ninth day of July A. D. 1899 at one o'clock P. M.

Great Seal
of the
State of Utah.

J. T. Hammond,
Secretary of State.

EXHIBIT NO. 9 TO STIPULATION.

This Agreement, Made and entered into this thirty-first day of July, 1885, by and between the Oregon and California Railroad Company, of Oregon, hereinafter called the Selling Company of the one part, and the Central Pacific Railroad Company, of California, hereinafter called the Purchasing Company, of the other part,

Witnesseth, as follows:

First: The Selling Company hereby agrees to sell and transfer to the appointee of the Purchasing Company all its railway lines (the constructed portion of which lines extend from East Portland to a point about one and a half miles south of Ashland, and from Portland to Corvallis, and from Albany to Lebanon and are about 451 miles in length) and the appurtenances and all its rolling stock, supplies and equipment, its lands remaining unsold at the date of this agreement, and its rights and interests in lands, and rights to acquire and earn lands, and all its rights, grants, and franchises granted by the United States and also all its interests of every decription in the Northern Pacific Terminal Company, at a price and upon the terms hereinafter specified.

Second: The transfer of the property sold shall be made as soon as possible, and in any case not later than the first day of July, 1886, and in such manner as to give a good and clear title to the property sold to the ap-

pointee of the Purchasing Company, either by means of a sale under foreclosure of the deed of first mortgage of the Selling Company, or by such other means as the Counsel of the Purchasing Company may approve.

Third: The property sold shall, when so transferred, be free from all debts, liabilities and encumbrances of every description, except such liabilities and duties as may be incident to the land grant and franchises granted by the United States to the Selling Company and agreed to be transferred to the appointee of the Purchasing Company and except any and all such liabilities for arrears of rent or otherwise, as may be incident to the interest of the Selling Company in the Northern Pacific Terminal Company. The value of the supplies transferred shall not be less than the value of those on hand at the date hereof and the Selling Company shall keep up the property to its present state of repairs until the transfer takes place. The whole amount of land sold at the date hereof does not exceed in aggregate 300,000 acres.

Fourth: For the purpose of adjusting the accounts and operating expenses, and dividing the earnings on the transfer of the property, an account shall be stated between the purchasing and Selling Companies as of the First day of July next; and all earnings of the railroads and other property sold, received after that date and the net proceeds and rentals of or from all lands sold or leased after the date hereof shall go to the credit of the Purchasing Company or its appointee which shall

undertake all expenses appertaining to the operation of the road as from the first day of July, 1886, and shall from such last mentioned date pay interest on the bonds to be issued in payment for the property purchased as hereinafter specified and shall pay or account for the dividends becoming due after said first day of July, 1886, on the shares in the Purchasing Company, to form part of the price as hereinafter mentioned. All net earnings of the existing railroads previous to the first day of July next, and the net price of all lands sold previous to the date hereof, shall belong to the Selling Company and no charge shall be made by the Purchasing Company or its appointee for receiving and paying over such amounts. The carriage of construction, labor and material over the existing lines shall be done at cost and without profit to the Selling Company, the certificate of the Chief Accounting Officer of the Central Pacific Railroad Company as to the amount of such cost being agreed to be final between the parties.

Fifth: The price of the property sold shall be $8,000,000 par value of the shares of the Purchasing Company, and carrying all dividends declared after July 1st, 1886, and $10,500,000 par value of bonds made or guaranteed by the Purchasing Company, to be secured on the property purchased as next hereinafter described, and carrying interest from July 1, 1886.

Sixth: The bonds to be issued or guaranteed by the Purchasing Company and delivered in payment as last mentioned, shall be payable principal and interest

in gold, forty years after date and bear interest from the first day of July next, at the rate of three per cent per annum for two years, and five per cent per annum thereafter, payable half yearly. Such bonds shall be either issued by or unconditionally guaranteed by, the Purchasing Company, as the Purchasing Company may decide, and shall be secured by a mortgage (to be made to the Farmers Loan and Trust Company in case such Trust Company shall perform the duties of trustee at not exceeding fifty cents per bond, otherwise the Union Trust Company, or such Company as shall be agreed upon by the parties) of all the property purchased hereunder, and of all extensions and of the future acquired property of the Purchasing Company in Oregon; and the deed of Mortgage shall be similar—except so far as otherwise stated in this agreement—to the existing deed of trust mortgage of the Selling Company. The net proceeds of the lands transferred and included in this mortgage shall form a sinking fund for the redemption of the bonds at par. The amount of the bonds to be issued under the mortgage shall be as follows: $30,000 per mile for every mile of standard gauge road, now or hereafter constructed or acquired and comprised in the mortgage and $10,000 for every mile of narrow gauge road now or at any time hereafter constructed or acquired and comprised in the mortgage. The mortgage deed shall provide for the issue and delivery to the Selling Company, upon the above mentioned transfer of the property to the appointee of the Purchasing Company, of the $10,500,000 of bonds

above specified and that the trustee of the mortgage shall further issue to the Purchasing Company or its appointee, for each mile of road constructed between Ashland and the California State line, $100,000 for such bonds, and for each ten miles of steel rails laid down on the present lines of the Selling Company and not now laid with steel rails, 450,000 of such bonds.

On the completion of the rail connection between the present lines of the Selling Company and the line of railway of the Purchasing Company any unissued bonds for which the mileage shall then be constructed, shall be transferred by the trustee to the Purchasing Company, or its appointee; *Provided, However,* that such aggregate issue to the Purchasing Company or its appointee shall not exceed, including the $10,500,000 to be issued to the Selling Company, the limit of $30,000 for each constructed mile. For any additional mileage constructed or acquired, either between Junction and Corvallis or elsewhere in Oregon, the Purchasing Company, or its appointee, shall be entitled to receive from the Mortgage Trustee, the sum of $30,000 for each mile of standard gauge road and the sum of $10,000 for each mile of narrow gauge road. The Mortgage Trustee, however, not to be compelled to accept less than ten miles of road at one time, except in cases of terminal sections. Deliveries of bonds under such mortgage are to be made by the Trustee from time to time upon presentation to it of affidavits of the President and Chief Engineer of the Purchasing Company, or its appointee, to the facts au-

1693

thorizing delivery of such bonds under this article, and without other evidence and proof thereof.

Seventh: Notwithstanding the provisions to be inserted in the mortgage deed restricting the future issue of bonds to a mileage rate as above specified, the mortgage deed, shall permit the Purchasing Company, or its appointee, to require the Trustee at one time, or from time to time, to issue and permit the sale of such amount or amounts of bonds as the Purchasing Company, or its appointee, may think fit: *Provided, However*, that the proceeds of such bonds shall be received by the Mortgage Trustee, and not by the Purchasing Company, or its appointee, and shall be disbursed by the Mortgage Trustee to the Purchasing Company, or its appointee, only pro-rata as and when the Purchasing Company, or its appointee, would have been entitled to receive such bonds thereunder under the foregoing articles hereof.

Eighth: The present holders of the First Mortgage Bonds of the Selling Company shall have the option, for 21 days after notice to that effect shall have been published in one daily paper in London and Frankfort respectively, of subscribing, in the ratio of one new bond for every three old bonds now held by them, respectively, to the new bonds to be issued in the manner above stated, at the price of eighty-six per cent of their par value, payable one-fifth on subscription and the residue in equal parts at the expiration of three, six, nine and twelve months from the date of such subscription.

Ninth: The Purchasing Company, or its appointee shall, within three years, from the transfer of the property as above prescribed, complete the railway between the present Southern terminus of the railway lines of the Selling Company, at or near Ashland, in Oregon and the present Northern terminus of the Oregon division of the Railway lines of the Purchasing Company, at or near Delta, so as to form a through line between Portland in Oregon and San Francisco in California.

Tenth: The 80,000 shares of the capital stock of the Purchasing Company of the nominal value of $8,000,000 above mentioned, shall be delivered to the Selling Company upon the transfer of the property as above prescribed, and shall, in the first instance, be registered for the purpose of delivery in the joint names of George Henry Hopkinson, the President of the Selling Company, or of such other person as may be the President of the Selling Company and C. E. Bretherton, Vice President of the Selling Company, or of such other person as may be the Vice-President of such Company. But such shares shall carry dividends only from the 1st day of July, 1886, as above stipulated.

Eleventh: This agreement shall be void unless the Stockholders of the Oregon and California Railroad Company, shall, within two months from this date, ratify this agreement, and the two committees now formed respectively in London and Frankfort and representing the First Mortgage Bondholders of this Company, shall,

within the same time, execute in due form a confirmation and acceptance of this agreement.

Twelfth: The Selling Company binds itself to execute to the Purchasing Company or its appointee, on or before the First day of July, 1886, a proper deed transferring the property hereby agreed to be sold, free from all debts, liabilities and encumbrances, except as above specified, and to transfer the possession thereof and in case it shall fail to do so, the Purchasing Company, may, at its option, declare this agreement to be void.

Thirteenth: No personal liability of any description shall attach to the officers of the two contracting Companies, who execute this agreement on their respective behalf.

In Witness Whereof, the parties hereto have, by their respective Vice-Presidents thereunto duly authorized, executed these presents the thirty-first day of July, 1885.

The Oregon & California Railroad Company,
By C. E. Bretherton,
Vice-President.

The Central Pacific Railroad Company,
By C. P. Huntington,
Vice-President.

EXHIBIT NO. 10 TO STIPULATION.

Agreement for Construction of the Oregon and California Railroad South of Ashland.

This Agreement, Made this sixth day of June, 1887, between the Pacific Improvement Company, a corporation duly organized and existing under the laws of the State of California, party of the first part, and the Oregon and California Railroad Company, a corporation duly organized and existing under the laws of the State of Oregon, and of the United States of America, party of the second part, Witnesseth:—

That the party of the first part agrees to and with the party of the second part,

First:

That it will construct and equip for the party of the second part that portion of the Railroad and Telegraph line of the party of the second part now uncompleted, commencing at a point near Ashland, in the State of Oregon, and extending southward to the Northern boundary line of the State of California, to a connection, at said boundary line, with the Railroad and Telegraph Line of the California and Oregon Railroad Company.

Second:

That it will construct and complete said portion of said Railroad and Telegraph line in a good and workmanlike manner to the satisfaction of the President and Chief Engineer of the party of the second part, and

upon a line located and to be located by said Engineer; that when said Railroad and Telegraph line shall be completed they shall be in all respects equal to the Railroad and Telegraph line of the California and Oregon Railroad Company, and shall comprise all things necessary and proper for a first class single track Railroad and a first class Telegraph line and the operation thereof.

Third:

That it will equip said Railroad with rolling stock (up to the standard of the California and Oregon Railroad) as follows:

1.—One locomotive for every four miles in length of said road constructed by it.

2.—Two passenger or mail or express cars for every five miles in length of said road so constructed.

3.—Six box or flat cars for every mile of road so constructed; and

4.—One hand car for every six miles of road so constructed.

The proportion of passenger, mail, express, box and flat cars to be furnished under the above specifications to be determined by the party of the second part, and all of said equipment to be furnished and delivered upon demand of said party.

Fourth:

That it will construct and equip the said Railroad and Telegraph line between said Ashland and said Boundary line within a reasonable time from the date hereof.

Fifth:

That it will furnish and pay for all the engineering service (except the salary of the Chief Engineer), requisite for the location and construction of said Railroad and Telegraph line.

Sixth:

That it will pay all costs, damages and other expenses henceforth incurred in procuring the right of way for said Railroad and Telegraph line.

Seventh:

That it will lay down upon the present completed line of said party of the second part first class steel rails of the same pattern and weight as those now laid upon the California and Oregon Railroad, to any extent which the party of the second part may, within two years from the date hereof, request and that it will lay said rails in a good and workmanlike manner and to the satisfaction of the President and Chief Engineer of the party of the second part.

And,

This Agreement further Witnesseth:—That the party of the second part agrees to and with the party of the first part as follows:—

First:

That it will pay to the party of the first part for each and every mile of said Railroad and Telegraph line constructed and equipped by said party of the first

part as aforesaid, One Hundred Thousand Dollars of its new Mortgage Bonds, with the coupons thereon, the issue of which is provided for in the third subdivision of an Agreement made and entered into in the year 1887, between George Henry Hopkinson, Robert Davie Peebles, Patrick Buchan and Charles Edward Bretherton, the Stockholders' Reconstruction Committee of the Oregon and California Railroad Company, the Pacific Improvement Company, a corporation organized and existing under the laws of the State of California, Lawrence Harrison, Andrew Haes, Henry Hopkinson, George Henry Kearton and Lawrence James Baker, a committee representing the British holders of the First Mortgage Bonds of the Oregon and California Railroad Company, Heinrich Hohenemser, Hermann Koehler, Carl Pollitz, Adolph Otto, Phillip B. Bonn, Siegmund Lion and Emil Kalb, a committee representing the German holders of the First Mortgage Bonds of said Company, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky and the laws of the United States of America, the Oregon and California Railroad Company, and the Union Trust Company, a corporation organized and existing under the laws of the State of New York; said payment to be made upon the construction, equipment and acceptance by the party of the second part of each section of ten miles or final fraction of such section of that part of said Railroad and Telegraph line the construction of which is hereinbefore provided for, said construction and aceptance to be established by the affidavits of the President and Chief Engineer of the party of the second part.

Second:

That it will pay to the party of the first part for every ten miles of steel rails laid by it under the provisions of this contract, upon the completed portion of the Railroad of the party of the second part, Fifty Thousand Dollars in Bonds with the coupons thereon, of the issue referred to in the subdivison hereof next preceding, and will make said payment of Fifty Thousand Dollars in said Bonds for every ten miles of rails so laid when the fact of their having been laid in accordance with the terms of this Contract has been established by the affidavits of the President and Chief Engineer of the party of the second part.

Third:

That the party of the first part may use its name in any proceeding necessary to obtain the right of way for said Railroad and Telegraph line to be by it constructed.

And,

This Agreement Further Witnesseth:—That should the party of the second part become dissatisfied with the manner of the prosecution of the work herein provided for, and the party of the first part should fail or refuse when requested to remove the cause of such dissatisfaction, or to prosecute said work as required by the party of the second part, or to perform any of the conditions of this agreement on its part to be performed, then the party of the second part may take possession of all the work finished or unfinished, and of all equipment, and

also of all the tools, horses, carts, wagons, provisions, material and other things used in the construction of said Railroad and Telegraph line, or purchased for that purpose, and may complete the said Railroad and Telegraph line and the equipment thereof, in the manner herein provided, at the expense of the party of the first part, the profit or loss as the case may be, to be received or sustained by the party of the first part.

In Testimony Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents and Secretaries, and their respective Corporate Seals to be hereto affixed.

EXHIBIT NO. 11 TO STIPULATION.

On Motion of Director Donald Macleay, seconded by Director R. P. Earhart, the following preamble and resolutions were unanimously adopted:

Whereas the sale of certain lands comprised in the land grants of this Company, described in the following schedule, has been effected by the Land Department of this Company; and

Whereas the Company has received the proceeds of such sales, and

Whereas, By decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July 1890, in a suit in equity of which James Steel was plaintiff and the Oregon and California

Railroad Company and the Union Trust Company of New York were defendants, it was adjudged and decreed by said Court that lands which were sold by said Oregon and California Railroad Company prior to May 12 1887 were not included in, or covered by that certain deed of trust from said Oregon and California Railroad Company to said Union Trust Company dated the 1st day of July, 1887, and

Whereas That prior to May 12th, 1887, lands were sold under Contract by this Company with a condition that a good and sufficient deed should be given, and

Whereas, Unpatented lands were sold after May 12th, 1887, under contract for quit claim deed only.

Resolved that the Second Vice President and the Secretary of this Company be and they are hereby authorized and directed to execute under their official signatures and the corporate seal of this Company deeds to the respective grantees in accordance with the terms of the Contract of sale and with the forms of deed now presented to this Board, which forms of deed are in words and figures as follows, to wit:

Deed No.—— Issued for Contract No.——

This Indenture Made this ————————day of————————A. D. 18——between the Oregon and California Railroad Company, a corporation duly incorporated under the laws of the State of

Oregon, party of the first part, and————————party of the second part.

Witnesseth, That Whereas, The party of the first part did on the ————day of———— A. D. 18——by its Contract Numbered———— sell and agree to convey unto———————— the land hereinafter described for the sum and price of————————Dollars, to be paid as in said contract provided, and

Whereas, Said purchase price has been fully paid to the party of the first part, and said ————————as assignees of said———————— has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest which it, the party of the first part, has or may hereafter acquire from the United States in and to said land, and

WHEREAS, By the judgment and decree of the Circuit Court of the State of Oregon, for the County of Multnomah, rendered on the 12th day of July, A. D. 1890, in a suit in equity, in which James Steel was plaintiff and the said Oregon and California Railroad Company and the Union Trust Company, a corporation incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found, adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered

by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded in the record of Mortgages for said County of————————————in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right, under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said County of————————————

Now Therefore, In consideration of the premises, and of the payment to the party of the first part of the said sum of———————————— Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, ———————————— heirs and assigns, all of the said land, which is known and described as follows, to-wit

———————————————————————————

containing, according to the United States survey thereof————————————————————acres, be the same more or less.

To Hold The said premises, with the appurtenances thereto, unto the said party of the second part, heirs and assigns forever, reserving however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises: and the right to take all water needed for the operating of said railroad: and also reserving and excepting from said described premises so much, and such parts thereof, as may be mineral lands, other than coal and iron.

And the said party of the second part does hereby, for————self and ————heirs and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that————————will erect and maintain, on the boundary line or boundary lines between said premises and such right of way, a good lawful and substantial fence sufficient to turn stock.

In Witness Whereof, The said party of the first part has caused these presents to be sealed with its seal and executed by its———————— president and ————————secretary, and the party of the second part has hereunto set ———————— hand and seal, the day and year first above written.

(Signatures)

(Acknowledgment)

Deed No.——— Issued for Contract No.———

This Indenture, Made this————————day of————————A. D. 18—, between the Oregon and California Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, party of the first part, and———————— party of the second part.

Witnesseth, That Whereas, The party of the first part did on the————————day of ————————A. D. 18——, by its Contract Numbered————————sell and agree to convey unto————————the land hereinafter described, upon payment to be made therefor, as in said contract specified, reserving therein the right to said party of the first part, in default of such payment being made to cancel and annul said contract: and

Whereas, For such default the party of the first part did thereafter cancel and annul the said Contract, and did by its Contract Numbered———, on the————————day of————A. D. 18— sell said land unto————————for the sum and price of————————Dollars, to be paid as therein provided; and

Whereas Said purchase price therein specified has been fully paid to the party of the first part, and said————————as assignee of said ————————has thereby become entitled to a conveyance from the party of the first part

of all the right, title and interest which it the party of the first part, has or may hereafter acquire from the United States in and to said land: and

Whereas By the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July, A. D. 1890, in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found, adjudged and decreed by said Court that lands which had been sold by said Oregon and California Railroad Company prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded in the record of mortgages for said County of————————— in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands and that said Union Trust Company has no right, under the terms of said trust deed, to nor any interest in the money received by said party of the first part for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said County of—————————

Now Therefore, In consideration of the premises, and of the payment to the party of the first part of the said sum of———————— Dollars the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company party of the first part, does hereby convey release and quitclaim unto said———————— party of the second part————————heirs and assigns, all the right, title and interest which it the party of the first part, now has or owns, or may hereafter obtain or acquire from the United States, in and to the said land, which is known and described as follows, to wit:

---

containing, according to the United States survey thereof————————acres, be the same more or less.

To Hold the Said Premises with the appurtenances thereto, unto the said party of the second part,————————heirs and assigns forever, reserving, however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises: and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much, and such parts thereof, as may be mineral lands, other than coal and iron.

And the said party of the second part does hereby, for self, ——————heirs and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that ——————will erect and maintain, on the boundary line or boundary lines between said premises and such right of way, a good, lawful and substanital fence, sufficient to turn stock.

In Witness Whereof, The said party of the first part has caused these presents to be sealed with its seal, and executed by its——————President and Secretary, and the party of the second part has hereunto set——————hand and seal, the day and year first above written.

(Signatures)
(Acknowledgment)

Resolved that the Land Agent be and he is hereby authorized and directed to deliver the deeds to the respective parties when executed by the Company.

EXHIBIT NO. 12 TO STIPULATION.

On motion of Director Donald Macleay, seconded by Director J. McCracken the following resolution was unanimously adopted, viz.

Resolved that the following form is hereby adopted as the form of deed to be given by this Company to purchasers of lands earned by the construction of this Com-

pany's railroads in pursuance of the Acts of Congress approved July 25th, 1866, and May 4, 1870, when under the terms of sale this Company agrees to merely remise, release and quitclaim its right, title and interest in such lands, said form being in words and figures as follows, to wit:

Quitclaim Deed No.——

Issued for Contract No.——

This indenture, Made this ———day of——— A. D. 18— between the Oregon and California Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, party of the first part, The Union Trust Company of New York, a Corporation created and existing under and by virtue of the laws of the State of New York, party of the second part, and——————— hereinafter called the purchaser, party of the third part

Witnesseth: That in consideration of the sum of———————Dollars, paid to the party of the first part, and the sum of——————— Dollars, paid to the party of the second part, by direction of the party of the first part, as per terms of Deed of Trust by party of the first part to party of the second part, of date July 1st, 1887, the Oregon and California Railroad Company doth hereby remise, release and quitclaim unto said purchaser, his heirs and assigns, all of the right, title and interest, which it, the said Oregon and California Rail-

road Company now has, or owns, or may hereafter obtain or acquire in and to the hereinafter described lands, and the said Union Trust Company of New York doth hereby release and confirm unto said purchaser, his heirs and assigns, the said lands which are described as follows, to wit:

---

containing, according to the United States survey thereof, ——————————acres, be the same more or less, being understood to be part of the land granted by the United States to the said Oregon and California Railroad Company, and embraced within the terms of and conveyed by a certain Deed of Trust, executed by the party of the first part to the party of the second part, as Trustee, and bearing date July 1st, A. D. 1887.

To Hold the said premises, with the appurtenances thereto, unto the said purchaser, his heirs and assigns, forever freed and discharged from the lien, powers and trusts of said Deed of Trust or Mortgage of July 1st, 1887, reserving, however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises, and the right to take all water needed for the operating of said railroad, and also reserving and excepting from said described premises so much, and such parts thereof as

or may be mineral lands, other than coal or iron.

And the said purchaser does hereby for himself, and his heirs and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that he will erect and maintain on the boundary line or boundary lines between said premises and such right of way, a good, lawful and substantial fence, sufficient to turn stock.

In Witness whereof, The said parties of the first and second parts have caused these presents to be sealed with their respective seals, and executed by their respective Presidents and Secretaries, and the party of the third part has hereunto set his hand and seal the day and year first above written.

(Signatures)

(Acknowledgment)

EXHIBIT NO. 13 TO STIPULATION.

Statement of maps of survey and location filed in the Interior Department of the United States, by the East Side Company and Oregon & California Railroad Company, under the East Side Grant:

Map of first section extending from East Portland to Jefferson was filed October 29, 1869.

Maps of the second and third sections (two maps) extending from Jefferson to a point in south line of Twp. 27 S., R. 6 W., W. M., was filed March 26, 1870.

Map of the fourth section, extending from the point in the south line of Twp. 27 S., R. 6 W., to a point in Sec. 30, T. 30 S., R. 5 W., was filed January 7, 1871; however, the line of road was amended by the filing of the map of the fifth section so that the railroad, as constructed, coincided with the map of the fourth section only as far as Station 1154 in Sec. 28 T. 29 S., R. 5 W., and the constructed line materially diverged from the location shown on this map for the remaining (approximately) 8 miles.

Map of of the fifth section, extending from Sec. 19, T. 27 S., R. 5 W., duplicating the location shown on the map of the fourth section from that point to Station 1154 in Sec. 28, T. 29 S., R. 5 W., and amending the line as shown by map of the fourth section from that point southwardly and extending to Station 1320+50 in Sec. 6, T. 30 S., R. 5 W., was filed April 6, 1882. This map was returned by the Commissioner of the General Land Office to the Secretary of the Interior with report and was received back by the Commissioner June 2, 1883.

Map of the sixth section, extending from Station 1320+50 in Sec. 6, T. 30 S., R. 5 W., to Station 2376+50 in T. 31 S., R. 7 W., was also filed April 6th, 1882, returned to the Secretary with a report and re-returned to the Commissioner of the General Land Office June 2, 1883.

Map of the seventh section, extending from Station 2376+50 to Sec. 33, T. 34 S., R. 6 W., was filed August 24, 1882, and was also returned to the Secretary with a report and re-returned to the Commissioner of the General Land Office June 2, 1883.

Map of the eighth section, extending from Sec. 33, T. 34 S., R. 6 W., to Sec. 21, T. 36 S, R. 3 W., was filed June 6, 1883.

Map of the ninth section, extending from Sec. 21, T. 36 S., R. 3 W., to the south line of Sec. 32, T. 37 S., R. 1 W., was filed July 3, 1883.

Map of the tenth section, extending from the South line of Sec. 32, T. 37 S., R. 1 W., to East line of Sec. 25, T. 39 S, R 1 E., was filed September 4, 1883 (General Land Office statement of Land Grants 1908, erroneously shows September 6, 1883).

Map of the eleventh section, extending from East line of Sec. 25, T. 39 S., R. 1 E., to the North line of Sec. 30, T. 40 S., R. 2 E. was filed August 1, 1883 (General Land Office statement of Land Grants—1908, errorneously shows August 2, 1883.)

Map of the twelfth section, extending from Sec. 30, T. 40 S., R. 2 E., to Southern boundary of the State of Oregon in Sec. 13, T. 41 S., R. 1 E., was filed August 18, 1884.

Maps of survey and location filed in the Interior Department of the United States, by the West Side Company claiming under the East Side grant:

Map of First section—60 miles, extending from Portland via Forest Grove and McMinnville, thence southerly towards Corvallis was transmitted by J. Gaston to the Interior Department of the United States and there received July 1, 1868 and was returned July 6, 1868 to Gaston for verification and other requirements.

In accordance with the said requirements a second map showing general location from Portland via Forest Grove, McMinnville and Corvallis to the South line of the State of Oregon, was transmitted by Gaston in compliance with the Secretary's letter of July 6, 1868 and was received by the Department of the Interior September 16, 1868, but no action taken thereon.

Also the map of the first sixty miles was returned by J. Gaston to the Interior Department and there received September 22, 1868.

Subsequently J. Gaston forwarded to the Secretary of the Interior and there received September 24, 1868, another map of the first sixty miles. Such map was sent by the Secretary of the Interior to Commissioner of the General Land Office November 22, 1871.

Maps of survey and location filed in the Interior Department of the United States, by the West Side Company, under the West Side grant:

The map of the section extending from Portland to McMinnville and from Forest Grove to Caster Creek was filed May 17, 1871.

The map of the remainder of the line from Caster Creek to Astoria was filed February 2, 1872.

EXHIBIT NO. 14 TO STIPULATION.

Statement of the dates of construction, completion, approval and acceptance, of the several sections of East Side railroad by the East Side Company and Oregon & California Railroad Company and West Side railroad by the West Side Company:

East Side railroad.

Construction of the First section of 20 miles 400 feet commencing at East Portland and extending to a point near Parrott's Creek was completed December 24, 1869, examined by commissioners appointed therefor and favorably reported upon December 31, 1869; such reports submitted by the Secretary of the Interior January 26, 1870 to the President of the United States and its acceptance recommended, and such recommendations were approved by the President January 29, 1870.

The Second, Third and Fourth sections of 20 miles each, extending from Parrott's Creek south-

wardly to a point about one-half mile beyond the Station of the City of Albany, 80 miles from the initial point, was completed during the year 1870, Commissioners' reports were dated September 28, 1870 as to Second and Third sections and December 10, 1870 as to Fourth section, and were transmitted by the Secretary of the Interior February 28, 1871 to the President of the United States with recommendations that the road be accepted and such recommendations were approved by the President February 28, 1871.

The Fifth and Sixth sections of 20 miles each were completed and the Commissioners' reports on such completion were dated respectively August 11, 1871 and January 13, 1872 and were submitted by the Secretary of the Interior to the President of the United States March 7, 1872, with recommendations that the line be accepted, which recommendations were approved by the President March 11, 1872.

The Seventh, Eighth and Ninth sections, beginning at a point 2½ miles Northwest of Eugene City, probably in NW ¼ of Sec. 23, T. 17 S., R. 4 W. and ending near Roseburg at a point which was probably in the SE¼ of Sec. 24, T. 27 S., R. 6 W., a distance of 77.3668 miles, was completed in 1872 and had been in effective use for traffic since the Summer of that year. The report of the Commissioners was dated December 27, 1876, submitted

by the Secretary of the Interior to the President of the United States July 10, 1878 with recommendations that the railroad be accepted and such recommendations were approved by the President July 11, 1878.

The Tenth section of 45 miles, beginning 585.66 feet South of the Roseburg depot in Sec. 24, T. 27 S., R. 6 W., and ending in Sec. 19, T. 30 S., R. 7 W., was wholly in operation from May 1883 and 28 miles thereof, from Roseburg to Riddle had been in operation since about November 1882. The report of the Commissioners was dated August 6, 1883 and was submitted by the Secretary of the Interior to the President of the United States August 20, 1883 with recommendations that the line be accepted, and such recommendations were approved by the President August 29, 1883.

The eleventh section of 100 miles in length, extending from a point 45 miles South of Roseburg to a point about 1¼ miles South of Ashland was open for public use on the following dates:

From the North end to Glendale, 20 miles—May 14, 1883.

To Grants Pass—55 miles—December 4, 1883.

To Phoenix—91 miles February 25, 1884.

To Ashland—99 miles—May 5, 1884.

The report of the Commissioners was submitted

by the Secretary of the Interior to the President of the United States January 13, 1887, with recommendations that the section be accepted. Said recommendations were approved by the President January 29, 1887.

The Twelfth section, extending from the point 1½ miles south of Ashland to the boundary line between Oregon and California, a distance of 24.135 miles, was completed prior to June 20, 1888 and the report of the Commissioners was transmitted by the Secretary of the Interior to the President of the United States October 23, 1889 with recommendatoins that the railroad be accepted and such recommendations were approved by the President November 8, 1889.

West Side Railroad.

The First section of 20 miles was completed and the report of the Commissioners dated January 6, 1872 was approved and the section accepted by the Secretary of the Interior February 16, 1872.

The Second section, extending from the 20th mile post to the Yamhill River, a distance of 27½ miles, was reported on by Commissioners on May 3, 1876 and the reports approved and the section accepted by the Secretary of the Interior June 23, 1876.

EXHIBIT NO. 15 TO STIPULATION.

An Act to Create an Auditor of Railroad Accounts and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That section twenty of the act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes.", approved July first Anno Domini eighteen hundred and sixty-two, and the act entitled "An Act relative to filing reports of railroad companies," approved June twenty-fifth, Anno Domini eighteen hundred and sixty-eight, be, and the same are hereby repealed.

SEC. 2. That the office of Auditor of Railroad Accounts is hereby established as a bureau of the Interior Department. The said Auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said Auditor shall be, and is hereby, fixed at the sum of five thousand dollars. To assist the said Auditor to perform the duties of said office, the Secretary of the Interior shall appoint one bookkeeper at an annual salary of two thousand four hundred dollars, one assistant bookkeeper at an annual salary of two thousand dollars, one clerk at an annual salary of one thousand four hundred dollars, and one copyist at an annual salary of nine hundred dollars. Actual and necessary traveling and

other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said Auditor or any person acting under his direction, incidental expenses for books, stationery, and other material necessary for the use of said bureau are hereby allowed not to exceed the sum of seven hundred dollars per annum. And the sum of twelve thousand dollars is hereby appropriated for the uses and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and seventy-nine.

SEC. 3. That the duties of the said Auditor under and subject to the direction of the Secretary of the Interior shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are

enforced; to furnish such information to the several departments of the government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the government; and to make an annual report to the Secretary of the Interior, on the first day of November, on the condition of each of said railroad companies, their road, accounts, and affairs, for the fiscal year ending June thirtieth immediatly preceding.

SEC. 4. That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said Auditor any and all such reports as he may require from time to time and shall submit its books and records to the inspection of said Auditor or any person acting in his place and stead, at any time that the said Auditor may request, in the office where said books and records are usually kept; and the said Auditor, or his authorized representative, shall make such transcripts from the said books and records as he may desire.

SEC. 5. That if any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to submit its books and records to inspection, as provided in section four of this act, such neglect

or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand nor more than five thousand dollars, to be recovered by the Attorney-General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney-General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced.

SEC. 6. This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies.

SEC. 7. This act shall take effect on and after the first day of July, anno Domini eighteen hundred and seventh-eight.

Approved, June 19, 1878.

EXHIBIT NO. 16 TO STIPULATION.

REPORT OF QUOTATIONS
OF CENTRAL PACIFIC RAILROAD COMPANY STOCK
AND BONDS
EASTERN AND FOREIGN MARKETS

As Published in the San Francisco Evening Bulletin on the Dates Shown Below.

Date		Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
1886							
Oct.	1	3	3	48 1/2	48 1/4		
"	2	3	4	48 3/8	48 1/4	...	116
"	3	Sunday—No issue.					
"	4	3	2	48 3/8	48 7/8		
"	5	3	3	49 1/2	49 3/8		
"	6	3	2	49 1/2	47 1/4		
"	7	3	2	49 1/2	49 1/2		
"	8	3	3	49 1/8	48 1/2		
"	9	3	3	....	48 1/2		
"	10	Sunday—No issue.					
"	11	3	2	48 5/8	48	....	115 1/2
"	12	3	3	47 7/8	....		
"	13	3	3	47 1/2	49		
"	14	3	3	49	....		
"	15	3	3	....	....	...	115 1/2
"	16	3	3	48 1/8	48	...	
"	17	Sunday—No issue.					
"	18	3	3	....	47 1/2		
"	19	3	3	....	47 1/2	...	115

Date	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
1886						
Oct. 20	3	3	....	48	115	115
" 21	3	2	....	47½	...	115
" 22	3	3	....	47¼		
" 23	3	3	....	47¼	...	115
" 24	Sunday—No issue.					
" 25	3	3	47½	47¼	...	115¼
" 26	3	2	....	47	...	115¾
" 27	No Market Report.					
" 28	3	3	....	46⅞	...	115¼
" 29	3	3	....	....	...	116¼
" 30	3	3	47½	47½	...	115¾
Nov. 15	3	3	47⅛	47¼	...	115¾
Dec. 15	3	3	44	44	...	....
1887						
Jan. 15	3	3	....	42	...	114¾
Feb. 15	3	2	37	36¼		
Mar. 15	3	2	36½	36½		
Apr. 15	3	2	....	41½		
1887						
May 13	3	3	....	40½	...	117⅛
Jun. 15	3	2	38¾	38¾		
July 1	No Market Report.					
" 2	No Market Report.					
" 3	Sunday—No issue.					
" 4	Holiday—No issue					
" 5	No Market Report.					
July 6	Not quoted.					
" 7	" "					

Date 1887	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
July 8	Not quoted.					
" 9	No Market Report.					
" 10	Sunday—No issue.					
" 11	3	1	38	38		
" 12	3	2	....	....		
" 13	3	3	....	37		
" 14	Not quoted.					
" 15	"	"				
" 16	3	2	38	38		
" 17	Sunday—No issue.					
" 18	Not quoted.					
" 19	3	2	....	....	...	114¼
" 20	Not quoted.					
" 21	"	"				
" 22	"	"				
" 23	No Market Report.					
" 24	Sunday—No issue.					
" 25	3	1	37½	37½		
" 26	Not quoted.					
" 27	No Market Report.					
" 28	3	2	35¼	35¼		
" 29	Not quoted.					
" 30	No Market Report.					
" 31	Sunday—No issue.					
Aug. 15	3	1	....	....	...	115
Sept. 10	7	2	36	....	...	
" 19	3	2	....	33¾		
Oct. 14	3	2	29	28½		

NOTE: Report of San Francisco Stock and Bond Exchange, as given in the San Francisco Bulletin, shows Central Pacific Railroad Bonds quoted at asked 101 from Oct. 14 to Nov. 11, 1887, inc., without change. Otherwise, neither Central Pacific Stock nor bonds quoted in San Francisco Stock and Bond Exchange Report during the period covered by this statement.

				STOCK		BOND	
Date	Page	Col'm.	Open	Clos.	Open	Clos.
1887						
Nov. 17	3	1	....	31½		
Dec. 1	3	1	....	32		
" 2	Not quoted.					
" 3	No Market Report.					
" 4	Sunday—No issue.					
" 5	3	1	35	....		
" 6	No Market Report.					
" 7	3	2	....	37⅞		
" 8	No Market Report.					
" 9	"	"	"			
" 10	"	"	"			
" 11	Sunday—No issue.					
" 12	3	1	36¼	36¼		
" 13	No Market Report.					
" 14	3	2	....	36½		
" 15	No Market Report.					
" 16	"	"	"			
" 17	"	"	"			
" 18	Sunday—No issue.					

Date	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
1887						
July 19	3	1	....	35		
" 20	Not quoted.					
" 21	No Market Report.					
" 22	"	"	"			
" 23	"	"	"			
" 24	"	"	"			
" 25	Holiday—No issue.					
" 26	No paper in file.					
" 27	No Market Report.					
" 28	"	"	"			
" 29	Not quoted.					
" 30	No Market Report.					
" 31	"	"	"			

REPORT OF QUOTATIONS
OF CENTRAL PACIFIC RAILROAD COMPANY STOCK
AND BONDS
EASTERN AND FOREIGN MARKETS

As Published in the Portland Oregonian on the Dates Shown Below.

Date	Price of Stock
1887.	
March 28	36
June 6	40
June 8	50¼
Dec. 28	33¼
1888	
June 6	38
Dec. 1	35

EXHIBIT NO. 17 TO STIPULATION.

Exhibit No. 9 to the Answer should be corrected in the following particulars:

1. The introductory clause states that the Exhibit contains "a few instances" of the acceptance by the Interior Department as based for lieu land selections, of lands conveyed by the Oregon and California Railroad Company in quantities greater than 160 acres to a single purchaser, and at a price exceeding $2.50 per acre. This leaves the implication that there are other similar instances. As a matter of fact, this Exhibit contains all of the transactions of this character.

2. Exhibit No. 9 to the Answer states that in each instance noted the lieu base deed and lieu selection was approved by the Interior Department. The fact is that a number of these forest lieu selections were pending in the Interior Department at the time the investigation of the subject-matter of this suit was instituted in the year 1907. Upon the recommendation of the Attorney General all of these selections pending at that time were suspended, and still remain under suspension. As to these selections which are under suspension no action has been taken by the Interior Department, and the title to the base lands has not been approved. The selections under suspension are as follows:

All of the 5,042.96 acres conveyed by the Railroad Company to A. B. Hammond Company, described in Exhibit No. 9 to the Answer as Contract No. 5392;

All of the 5,013.18 acres conveyed by the Railroad Company to John Claflin, described in Exhibit No. 9 to the Answer as Contract No. 5393;

All of the 6,214.34 acres (excepting 4,014.34 acres) conveyed by the Railroad Company to Big Blackfoot Milling Company described in Exhibit No. 9 to the Answer as Contract No. 5394;

All of the 3,700 acres conveyed by the Railroad Company to Marcus Daly, described in Exhibit No. 9 to the Answer as Contract No. 5395;

All of the 9,044.35 acres (excepting 2,787.72 acres) conveyed by the Railroad Company to R. S. Moore, described in Exhibit No. 9 to Answer as Contract No. 5401;

With the exceptions above noted Exhibit No. 9 to the Answer is correct.

EVIDENCE

Whereupon, It is further certified that in addition to the foregoing "Stipulation as to the Facts" there was duly taken within the time allowed by order of the court, by and before M. A. Fleming, Special Examiner, duly appointed to take and report the testimony herein on behalf of the complainant and the said defendants and appellants in said cause, further and additional evidence in words and figures as follows:

Whereupon, Counsel for defendants objected to any testimony being taken in this cause, on the ground that a court of equity has no jurisdiction and that this court has no jurisdiction to hear and determine the matters in issue.

TESTIMONY FOR COMPLAINANT.

Whereupon W. W. COTTON, called as a witness on behalf of the United States being first duly sworn, testified: That he has resided at Portland, Oregon, for 22 years and is now (December 8, 1911) secretary of the Oregon & California Railroad Company and has been such since September 15, 1904; that his predecessor in office was George H. Andrews and that his first official relation with the Oregon & California Railroad Company was his position as secretary; that he has also been a director of the Oregon & California Railroad Company) but occupied no other position; that he does not know exactly whether he has been an employe or not of the Southern Pacific Company; that he received no salary from

that Company of any kind, but for a given period—exactly how long he does not know—the Southern Pacific Company paid a portion of his salary to the Oregon Railroad & Navigation Company for part of the work he was doing for the Southern Pacific Company; that he never received, directly, any salary from the Southern Pacific Company or the Oregon & California Railroad Company and no salary as secretary of the Oregon & California Railroad Company. He was secretary, director and general attorney of the Oregon Railroad & Navigation Company from the time of its organization in 1896 and prior to that time had been secretary of the Oregon Railway & Navigation Company and was attorney for E. McNeill, receiver, and also for S. H. H. Clark and others, receivers of the Oregon Railway & Navigation Company prior to that date. From September, 1889, to October 15, 1893, he was attorney for the Oregon Short Line Railroad Company, then operating the lines of the Oregon Railway & Navigation Company under lease; he is the general attorney of the Oregon-Washington Railroad & Navigation Company and its assistant secretary, also held similar positions with some subsidiary corporations of Oregon Railroad & Navigation Company. As secretary of the Oregon & California Railroad Company has custody of its corporate records, including the record of the minutes of its directors' meetings and stockholders' meetings and he has in his possession six volumes of these records: Volume 1 commencing on the 17th day of March 1870, Volume 2 commencing with a continuation of the meeting of December 14,

1878, Volume 3 commencing June 4, 1883, Volume 4 commencing September 19, 1887, Volume 5 continuation of meeting of May 6, 1895, Volume 6 meeting of April 10, 1906. And he has the original triplicate of the Articles of Incorporation of the Oregon & California Railroad Company which the statute required should be filed with the secretary of the corporation; also that he has in his custody the corporate records of the old West Side Oregon Central Railroad Company. Whereupon it was stipulated that Mr. Luther F. Steel may produce for the inspection and use of counsel in this case all the corporate records in the possession of the Secretary of the Oregon & California Railroad Company relating to the Oregon Central (West Side), Oregon Central (East Side) and the Oregon and California Railroad Company. Whereupon, the witness further testified that said Steel was his clerk and in personal charge of all these records; and that he (witness) was about to go away from Portland for an extended absence, that is, to be absent for at least five months, and that he would turn over to said Steel, as his confidential clerk, all records, documents, stock ledgers and other papers in his custody as secretary of these corporations, so that said Steel might identify them if subpoenaed to produce them in evidence in this case. The witness further testified that he identified as the records of these various corporations the documents, and books that he would turn over to Mr. Steel. Whereupon it was stipulated that no question would be raised as to the identification of such documents, books and records.

Whereupon, said witness upon cross-examination further testified: That he received from George H. Andrews, his predecessor, as secretary of the Oregon and California Railroad Company the corporate records of that Company, identified by him, and also the corporate records of the Oregon Central Railroad Company of Portland, known in this record as West Side Company, and also the corporate records of the Oregon Central Railroad Company of Salem, known as Oregon Central East Side, and that he received a large number of other papers all covered by a receipt; that he was not secretary of the Oregon Central (West Side) or Oregon Central (East Side) and never has been; that as a matter of fact there is no corporate officer of the Oregon Central (West Side) or Oregon Central (East Side) at the present time that he knows of; that his leave of absence is on account of serious illness from which he has just now recovered; that he has no official relation with the Southern Pacific Company at this time (December 8, 1911) excepting that he is statutory attorney in fact upon whom process can be served; that he has never been a member of its Board of Directors or a corporate officer, but was a stockholder for a short time.

Whereupon L. F. STEEL, called as a witness on behalf of the United States, being first duly sworn testified: That he is associated with W. W. Cotton and is the same person referred to in the testimony of W. W. Cotton in whose custody Mr. Cotton would leave the records of the Oregon Central Railroad Company of Portland

known as the West Side Company, the Oregon Central Railroad Company of Salem, known as the East Side Company, and the Oregon & California Railroad Company, and witness now produces the records of the directors and stockholders meetings of the Oregon Central Railroad Company of Portland, known as the West Side Company and of the Oregon Central Railroad Company of Salem, known as the East Side Company. Whereupon it was admitted by counsel for the defendants that said records so produced were the corporate records of said Companies. Whereupon the witness further testified that he thought he possibly could not produce the original triplicate of the Articles of Incorporation of the Oregon & California Railroad Company that was filed with the Secretary of the Company but would make a search for the same so that he could either produce said documents or testify that it cannot be produced.

Whereupon the complainant offered in evidence the complete records of the Oregon Central Railroad Company of Portland, known as the West Side Company, produced and identified by the witness L. F .Steel, heretofore marked by the Examiner for identification "Government's Exhibit 100-A" and also the records of the Oregon Central Railroad Company of Salem, known as the East Side Company, produced and identified by the witness L. F. Steel, heretofore marked by the Examiner for identification "Government's Exhibit 100-B" with the understanding that the originals might be withdrawn and copies substituted and read into the records, which said "Government's Exhibit 100-A" is hereinafter set out and described and made a part of this Statement

of Evidence and identified herein as "Government's Exhibit 100-A" and which said "Government's Exhibit 100-B" is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibit 100-B."

Whereupon JOSEPH GASTON, called as a witness on behalf of the United States being first duly sworn, testified; that his full name is Joseph Gaston and he resides at 440 Sixteenth Street, Portland, Oregon, and has lived at Portland for 44 years; was born in 1833 at Loydsville, Belmont County, Ohio; that he spent a year or two occasionally on his farm in Washington County, but considered Portland his home all the time; that he left Ohio in 1862 at the age of 29 and came direct to Oregon, settling at Jacksonville, Jackson County, Oregon, and lived there until the year 1865, when he moved to Salem; that he studied law and was admitted to the bar before he left Ohio and that he practiced law in Jackson County, Oregon, and for a while in Marion County, after he came to Salem; that he moved from Jacksonville to Salem and lived at Salem until 1868, when he moved to Portland and since that time, with the temporary absences mentioned, Portland has been his home; that in addition to practicing law at Jacksonville and Salem, he was engaged in newspaper work, temporarily editing the "Jacksonville Sentinel" for a salary and at Salem the "Oregon Statesman" for a salary; that he is the Joseph Gaston who was the first President of the Oregon Central Railroad Company of Portland (West Side)

and was intimately connected with the whole railroad history of the State of Oregon and that he first became interested in the subject of constructing a railroad in Oregon under the following circumstances:

In the autumn of 1863 a surveying party making a reconnaisance or preliminary survey for a railroad from Marysville in California to the Columbia River, came to Jacksonville on their way north from California and there, not having paid their men, they were stranded and stopped there. And in their troubles to pay their men they came to me to help them out in some way, and I heard all their stories and consulted with various citizens of Jackson County, and finally took up the proposition of taking care of the men until the next spring, and raising some money to continue this survey northward from Jacksonville to Portland, or the Columbia River.

That there were three men, Simon G. Elliott, George H. Belden and A. C. Barry in charge of that surveying party; there were eight men besides these three men who were actively engaged in the work of surveying, and A. C. Barry is the same man who afterwards continued the survey in Oregon. Barry was then a floater in Oregon, but his home residence was in Danville, Illinois. Mr. Elliott was a Californian. Mr. Belden was a citizen of Portland. Belden was a competent engineer. Mr. Elliott claimed to be, but witness does not think he had any qualifications for the place and Mr. Barry was not a surveyor. He was a lawyer that had been in

the army fighting the rebels, got wounded and retired, coming out to Oregon. There was no progress made as to the survey during the Fall of 1863; after the men arrived at Jacksonville they simply stayed there and he (witness) subsisted them until the next spring. A dispute arose between Elliott and Belden as to who should control the survey from Jacksonville to Portland and this controversy was not settled at all. They could not agree. Elliott went back to California and Belden came on to Portland and just left the men there. Neither of them had any further connection with the survey in Oregon. Whereupon the witness further testified as follows:

"The question of a railroad from Portland up the Willamette Valley had been discussed by prominent men in Portland, and Mr. Belden being a civil engineer, and anxious to get into that kind of business, had promoted the idea, and finally a survey was made from Portland to Eugene City, on the East Side of the Willamette River, by Mr. Belden, and the expenses of the same was borne by people of Portland. I think Mr. W. S. Ladd was prominently connected with it; and then by people along through the towns and counties on the East Side of the Willamette River. The survey went no further than Eugene City, and their proposition was no further than Eugene City."

Whereupon the witness further testified that it was the plan of Belden and Elliott, when the party reached

Jacksonville in October, 1863, that they would contin
the survey to Eugene but they could not agree as
who should control the survey between Jacksonville a
Eugene City. Belden claimed that he had the right
direct the survey in Oregon, according to the agreeme
the same as Elliott had directed the survey in C
fornia. They talked it all before him.

The first thing to be done during the winter of 18
64 preparatory to the continuing of the survey in O
gon, if it was to be continued, was to make a provision
the surveyors, the men who had done the work so far a
he secured what was called the old hospital building
Jacksonville, which was already provided with beds a
cooking utensils and everything, and vacant, and he
the men in that building to stay there until spring a
provided them with food; he then commenced talki
with various leading citizens of Jackson County to ra
money to pay for the support of the men during
winter and to continue this work next spring on to Po
land; he found the farmers generally willing and
first man to contribute any money and actively supp
the measure was the father of the man now called "I
Bill Hanley"—Michael Hanley—and with his assi
ance witness raised a subscription of enough money
keep the men during the winter, and to hire a team,
start the men in the spring. For the purpose of maki
the survey and subsequently building the railroad;
wrote to some men in the northern part of the state
in Jackson County about the matter, but did not

anybody to encourage it much, excepting Judge Shattuck; there were some others but he was the man that encouraged the matter more than any one else although not a capitalist and not a man who could build railroads; they formed a little temporary incorporation under the laws of Oregon, to be a nucleus around which anything that was done might be held together which was called the California & Columbia River Railroad Company and the articles of incorporation of such Company were filed on October 13, 1863 although he does not remember whether that is the exact date or not; the witness thought that J. H. Moores, J. Gaston, S. G. Elliott and Charles Barry were the signers of the articles of incorporation of the California & Columbia River Railroad Company; this Charles Barry was the same person known as A. C. Barry before mentioned; he signed his name then as Charles Barry. His full name is Augustus Charles Barry. There was never any Board of Directors of the California & Columbia River Railroad Company and the organization was never perfected by the election of officers or the subscription of stock, but the survey during the next year, 1864, was conducted in the name of that Company. The receipts for payments to that promotion fund were issued by the witness as secretary of that corporation and in its name. Mr. Barry, outside of the men that did the actual work, was the only man that rendered any particular assistance associated with witness during the survey of the year 1864; of course there were a great many men that he was in correspondence with that helped along in any

way they could, but in the sense of leadership Mr. Barry assisted witness in a general way. With the financial support that witness had solicited during the winter of 1863-64 they resumed the survey in the spring of 1864, starting from Jacksonville and proceeding northerly, keeping on northerly to the Columbia River at St. Helens, then the party came back to Portland and commenced a line at Portland and ran up through the line now where the Narrow Gauge road is, or what we call the Narrow Gauge road, through the Sucker Lake pass, and on up into Yamhill County, connecting with the original survey there. Witness does not know exactly what time it was they reached Portland, but thinks it was in September, but is not certain as he was not here then, at this end of it. If the record shows October 1st, 1864 that is about correct. In the meantime witness thinks that he was aware of the fact that Congressman Bidwell of California had introduced in Congress a bill providing for a land grant to aid in the construction of a railroad from the Central Pacific in California to Portland, in Oregon. After the survey was completed Mr. Barry and witness got the engineers together at Salem and they made maps of their survey and witness and Barry prepared a pamphlet on the resources of Oregon to show the practicability of this proposition and had it printed at Salem. Mr. Barry took the maps and all the evidence of the engineers and that pamphlet and went on to Washington City to present the matter to Congress, in view of getting a land grant for the Oregon end of the proposition and witness thinks it was in the

month of November 1864 when Mr. Barry went to Washington. Barry remained most of the winter in Washington City. Witness does not know whether the bill introduced by Mr. Bidwell, after some amendment, was the same bill which finally became the Act of July 25, 1866, although he had correspondence with General Bidwell about it and Bidwell advised them to get into that bill in some way and co-operate with him. Witness had correspondence with Cornelius Cole who was a Senator from California. Witness could not say now whether Bidwell's bill was the one that passed Congress. There was a continual effort made to secure the passage of such a bill from some time in 1863 until the final passage of the act of July 25, 1866. Barry did not return to Portland after his trip East in the fall of 1864, but went back to Illinois. He did not have anything further to do with this project after that. The effort to secure the passage of the bill that winter was not successful. Witness did not go to Washington himself after that and he was not in Washington at any time prior to the passage of the Act of July 25, 1866 and took no part in the passage of that Act, except through the local Senators and Representatives in Congress and correspondence, but did endeavor to have the California & Columbia River Railroad Company designated as the corporation to build that part of the railroad in the State of Oregon, but failed in that attempt. Such failure was the trouble between Colonel Barry and Judge Williams who quarrelled over that matter. The fact was that Barry and witness had spent a great deal of time and

some money in trying to elect Judge Williams to t
United States Senate on his promise that he wou
stand by us in that railroad proposition, and when he
not do so and backed out of it Barry and Williams h
a quarrel in Washington. After the passage of the A
his first information as to its passage was a letter fr
Senator Cole that the Act had passed. Cole sent hin
copy of the Act and witness then took steps to get m
interested and incorporate a Company in Oregon w
a view of being designated under the act to receive t
land grant. The Oregon Legislature then conveni
in September of that year, witness prepared articles
incorporation and got them signed and also prepared
bill pledging the State to pay interest on $1,000,000.
of the Company's bonds and presented the matter to t
Legislature. After he had got 25 or 30 names—witn
has forgotten now how many—signed to the articles
incorporation witness took them to the office of the Se
retary of State and to the office of the County Cle
in Portland and had them filed.

"I told the Secretary of State that I still want
to use them with members of the Legislature after
had handed them to him to file, and he says, 'Well,
will just make a pencil filing on them, and you can u
them,' and handed them back to me.

Q. Now, do you know what date that was?

A. Well, that was some time in September, I ca
not remember just exactly.

Mr. Fenton: October 6, 1866.

Q. October 6, 1866?

A. Well, I thought maybe it was September.

Q. To refresh your recollection, I will direct your attention to a certificate of the Secretary of State upon the subject.

A. Yes, well.

Q. You observe that it was October 6, 1866?

A. Yes, I see. When I prepared that article, of course, I referred to the records.

Q. Now, on October 10, 1866, the Legislature of the State of Oregon passed the Joint Resolution No. 13, designating the Oregon Central Railroad Company as the corporation to receive the benefits of the act of 1866. I will ask you to state what you did after you presented these articles to the Secretary of State for filing and he made the pencil notation, down to the time that the Legislature passed this resolution.

A. Why, I was showing these articles of incorporation to the members of the Legislature.

Q. Were you in Salem at the time?

A. I was there every day. I lived there at that time.

Q. Who was Governor of the State at that time?

A. George L. Woods.

Q. Did you present these articles of incorporation to him?

A. I think so.

Q. Did he address to the Legislature a message upon the subject?

A. He did.

Q. I will ask you if you can identify the document that I now present to you as that message?

A. Yes, that is the message. I know there was a matter of some amusement about it. There was some stuff in it here toward the last that was considered buncombe, and very much like George L. Woods."

Whereupon counsel for the United States offered and there was admitted in evidence the special message of the Governor of Oregon identified by the witness and marked by the Examiner "Government's Exhibit 101," which said "Government's Exhibit 101" is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibit 101."

Whereupon the witness further testified there was no other corporation being organized by the name of "The Oregon Central Railroad Company" at that time so far as he knew and that the corporation referred to in the message aforesaid was the corporation that the witness was then engaged in organizing as he has described. That he consulted with Governor Woods about his signing that message. The Governor was helping him all he could. Witness presented the Governor with the articles of incorporation that he had prepared and

had presented to the Secretary of State and the corporate name of the corporation whose articles of incorporation he had so presented was "The Oregon Central Railroad Company." After the Legislature passed the resolution of October 10, 1866 designating the Oregon Central Railroad Company as the corporation to receive the benefits of the Act of Congress approved July 25, 1866, witness got a certificate under the corporation law signed by a certain number of incorporators designating himself to open the stock books of the Company—the corporation—and after that other signatures were obtained. It was represented to him by Governor Woods, at the time he sent in his message that if he (witness) would see R. R. Thompson with whom he had had a talk—R. R. Thompson was a wealthy man in Portland —and Captain Ainsworth and Simeon G. Reed, that he (the Governor) was satisfied that they would be willing to put up the money to build the first 25 miles of railroad, but that they must be consulted now, and considered, and that if they would sign the articles of incorporation the Governor thought it would be a very fortunate thing, and so witness came to Portland and saw these gentlemen and they did, or at least some of them did sign the articles, or at least agreed to support the proposition. Witness then went back to Salem and reported that he had succeeded in getting these men in. Witness brought to Portland with him the articles of incorporation for the purpose of getting these further signatures and did it with the knowledge and advice of Governor Woods. Witness being asked to examine the

articles of incorporation, a copy of which was then exhibited to him, further testified that he thinks it likely that H. W. Corbett was one of the first signatures he secured after the resolution had passed the Legislature, and that it is likely that Joel Palmer, the name preceding the signature of H. W. Corbett was the last signature obtained prior to the passage of the resolution of October 10, 1866. George L. Woods, the Governor, signed these articles of incorporation after the resolution of October 10, 1866, together with the other names which follow the name of H. W. Corbett. When witness came to Portland and saw Mr. Corbett, with whom he was acquainted, Corbett said "Yes, I will sign the articles, but I cannot put any money in," and witness asked Corbett if he would give him a letter to C. H. Lewis. Witness was not acquainted with Lewis. Corbett said "Yes, my signature is good enough for Lewis. You tell him that I sent you there." Witness went down and saw Lewis who said "Well I will sign them because Corbett did, but I won't put any money in." That was the recollection of witness of these two men. He then went to R. R. Thompson. He had a letter from Woods introducing him to Thompson and Thompson and Ainsworth and Reed all got together in a back room and they talked for an hour or so about the matter and then signed. Witness got John McCracken, who is still living, to sign afterwards. Afterwards he got Brown and Cox and witness was the last man to sign. Of these persons who signed the articles of incorporation prior to the passage of Resolution of October 10, 1866, J. S.

Smith was a man who had been prominent in affairs in Oregon. He was a member of Congress in Oregon afterwards and was at that time in Salem and manager of the woollen factory and was a large owner in the woollen factory in Salem. I. R. Moores was private secretary of Governor Woods and a man of some property in Salem and had been in the mercantile business there for years. J. H. Mitchell is the same Mitchell who afterwards became Senator from the State of Oregon and was afterwards identified with the East Side Company. I. R. Moores was present in the State House at Salem at the time witness presented these articles for filing on October 6, 1866. Samuel E. May was Secretary of State at that time and the conversation with reference to filing the same took place between witness and Mr. May on October 6, 1866, I think, in the presence of Mr. Moores, who was I think, assistant to Mr. May and private secretary to the Governor; that is, he was Assistant Secretary of State. Whereupon the witness further testified as follows:

"Q. Well, Mr. Gaston, I assumed that you had related, or narrated the conversation between yourself and Mr. May, but to avoid any doubt upon the subject, I will ask you to state fully the conversation between yourself and Mr. May upon that occasion, and whether Mr. Moores was present and overheard it.

A. Well, Mr. Moores was present and heard the conversation. And when I presented the articles of incorporation to him, I think that they were not in an envelope, and that Mr. May opened them, and looked

to see if there were three names attached, as he said that that was necessary to form a corporation before the paper could be filed; and after he saw that there was more than three names, he says to me, 'I will just file these in pencil, and give them back to you to use, as you wish.' And he made that filing in pencil, and afterwards admitted that he had made such a filing, because his writing was plainly visible after the trouble commenced between the two corporations. I showed him that and he took back a statement that he said formerly that he had not filed them.

Q. What was that pencil notation? How did it read?

A. Filed October 6.

Q. 1866?

A. 1866.

Q. And upon what part of the document was it?

A. Why, it was on the back part of the folded up document, where the space was left. There was no writing or anything. It was not on an envelope; it was on the document itself.

Q. Now, was it the same day or afterwards that you took them to Governor Woods—took the articles of incorporation to Governor Woods?

A. Well, I couldn't say now whether it was the same day or not, because I was in Woods' office every day that we were working on that proposition.

Q. Well, was it between the time that you had this conversation with Mr. May and the time that the legislature passed the resolution?

A. Oh, yes. I think I took them—I took them to Woods' office immediately afterwards, and then he said he would write this message to the Legislature.

Q. Now, how long were you engaged in soliciting further signatures to those articles of incorporation at Portland? About how long?

A. I think I was only one day in Portland—might have been two. I came down in the steamboat, and stayed a day, and went back, I think the next day.

Q. Can you, by reference to any memorandum or article that you have written upon the subject, state when you returned the articles of incorporation to the office of the Secretary of State?

A. Well, I could not state that exactly.

Q. I say, could you by reference to your articles here?

A. I don't know.

Mr. Fenton: The acknowledgment, Mr. Townsend, will show.

Mr. Townsend: November 21st. It won't do any harm to lead him on that.

Mr. Fenton: No, that is all right.

Q. Everything shows it was November 21st, if that conforms to your general idea?

A. That, of course, I think was about the time.

Q. Now, you did return them to the office of the Secretary of State about November 21st?

A. Yes.

Q. Did you know at the time that any new filing mark was made upon those articles of incorporation?

A. No, I did not.

Q. Did you know that there was then indorsed upon the articles of incorporation a filing mark as of November 21, 1866?

A. No, I did not.

Q. Did you know at that time that other articles of incorporation, designating the same corporate name, had been filed as of November 17, 1866?

A. No, sir, I did not.

Q. When did you first learn that?

A. Well, it was, I think, about a month afterwards, after I took the articles back, that I learned of that.

Q. And who informed you?

A. Mr. Moores.

Q. I. R. Moores?

A. Yes, Mr. I. R. Moores.

Q. Did you then go and inspect the articles of incorporation of the other company?

A. I did.

Q. Did you find the fact to be that the other articles appeared of record as having been filed prior to your articles?

A. I did.

Q. The records show that the signers of the other articles of incorporation were J. S. Smith, I. R. Moores, and E. N. Cooke. Was that the same I. R. Moores?

A. Yes, sir.

Q. Mr. Moores, then, was a signer of your articles?

A. Yes.

Q. And overheard the conversation between yourself and May as to the withdrawal of your articles from the files, and in the meantime signed the other articles, and filed them prior to yours?

A. Yes, sir.

Q. After you learned that articles of incorporation of another company bearing the same corporate name as your own had been filed, just state in a general way what, if any, controversy arose between you, and what resulted, carrying your narrative down to the time that Mr. Elliott arrived and the corporation of April 22, 1867, was attempted to be organized.

A. Well, after I found out that Moores had filed

those second articles, we had conversations. I told him that he could not do it; that there could not be two companies in the same name, and that he was aware that the articles I had filed, and had been before the Legislature, had been filed, and that the corporation was in existence under the statute, and that his filing of second articles was a void act—it was impossible for him to make it stick. But I didn't want any trouble, and he professed the same feeling, that he didn't want any trouble over the matter, and we had several meetings to try and compose the differences. And I wouldn't agree to anything but that they should withdraw their articles and proceed on the original filings, as that was the material that was before the Legislature, and that would not be disputed. It went on that way, in an unsettled manner—there was no agreement arrived at until Mr. Elliott—

Q. How about Mr. Clark?

A. Mr. Clark and then Mr. Elliott arrived on the scene, and after that, why, there were these third articles filed."

Whereupon witness further testified that the Mr. Elliott referred to was the same S. G. Elliott who arrived at Jacksonville in the fall of 1863 with the party of surveyors and he appeared in Oregon the next spring, in April 1867, he thinks, and immediately after he came to Salem to see him and Elliott said he had made arrangements for capital to build the road and all that and wanted witness to go in with them and become secretary of the Company. Elliott would be president and

they would build the road right off. Witness declined to throw away the old articles. Elliott wanted him to go in on the new articles—the third articles—and finally witness told Elliott if all the incorporators of the Company that witness represented would instruct him so to do, he would do so, but could not stipulate away any rights that they had, so that after Elliott arrived the third set of articles of incorporation, bearing the same corporate name, was prepared and these are the articles of the so-called East Side Company. Nothing was ever done with reference to the second set of articles filed on November 17th other than the mere filing of the same. There never was any organization under that whatever. Witness thinks that the third articles of incorporation were filed about April 22, 1867. The first controversy, after the articles prepared at the instigation of Mr. Elliott were filed, arose from the use of the corporate name and that was the controversy in the newspapers and among the people interested in the building of the railroad in a public way. It was discussed in the newspapers and the first thing witness did after he learned that they had authorized the issue of bonds in the name of the Company of witness was to send a circular to the bankers and brokers in New York, Philadelphia and Boston informing them of the facts of this dispute and that the third Company, or the Salem Company was to his notion, a fraud and a swindle upon any person that would invest in their securities.

Whereupon witness identified "Government's Exhibit 102" as such circular whereupon complainant of-

fered said exhibit in evidence to which defendants
jected as incompetent and as a self serving declarati
which said exhibit is hereinafter set out and describ
and made a part of the Statement of the Evidence a
identified as Government Exhibit 102.

Whereupon witness further testified that in t
meantime they had to organize by subscription of o
half the capital stock of the Oregon Central Railro
Company, (West Side) before they (witness and
associates) could elect a Board of Directors. That w
done by witness and other parties and they elected
Board of Directors, and proceeded to get their subscri
tions and in Portland Captain John C. Ainsworth und
took to canvass himself for stock subscriptions and secu
considerable money, which was collected and invest
in the construction of the road. Witness does not rec
lect distinctly with reference to the acceptance of t
grant extended by Congress by the Act of July 25, 186
or as to whether it is not a fact that failing to secure
subscription of one-half of the capital stock of his Co
pany within a reasonable time the incorporators did n
sign an assent or acceptance and forward same to t
Secretary of the Interior, which was rejected upon t
ground that the acceptance had to be by the Directo
of the corporation instead of the incorporators.

Whereupon the witness further testified as fo
lows:

"Q. "Now, the records of the West Side Compan
which are now in evidence show that the West Si

Company was finally organized on May 24, 1867?

A. Yes.

Q. Now, it is a fact, is it not, Mr. Gaston, that you failed to secure subscriptions to one-half of your capital stock, and to effect an organization you were finally compelled to, and did, subscribe in your own name, for the use of the corporation, a considerable—how much was it? Two Million?

A. Two and a half million.

Q. Two million and a half of the capital stock of the corporation?

A. Yes, sir.

Q. And the organization was effected in that manner?

A. Yes, sir."

Whereupon the witness further testified that it was after that that directors and officers were elected and the assent of the West Side Company adopted and forwarded to the Secretary of the Interior. The subscription by himself was not in the name of the Company like that made by the Salem fellows. It was in his own name, although it was by him as Trustee for the corporation. That O. H. Browning, Secretary of the Interior was part of the Committee that examined witness when he was admitted to the bar and witness wrote him a private letter explaining why these things were done in this way, with the other papers; witness was afraid at the

time that they would investigate that subscription he made to the capital stock and might question it and witness wrote Brownell a private letter explaining that all to him, with the assent of the Company which was forwarded. The Directors of the West Side Company were elected at the time the first stockholders meeting was held in May, 1867 and they proceeded to elect officers. Witness was elected first president and W. C. Whitson secretary, and speaking generally, from that time on until 1870 witness represented the West Side Company in a general way in its controversy with the East Side Company and its other dealings. Down to the time that Mr. Holladay became identified with the East Side Company in September 1868, John H. Mitchell represented them in this controversy and in all the dealings of the East Side Company in Courts and a great deal of the time outside of the Courts, but I. R. Moores was the man in all business transactions. Moores was secretary for a good while, but whether Moores was president at that time or whether George L. Woods was president he could not say. After witness and his associates got the line located for construction purposes as far as Fulkerson Gap in Polk County, they filed a map showing the exact line, in compliance with the formal requirements of the Act of July 25, 1866. It is my recollection that it was the Fulkerson Gap, but it might have been the other Gap. Witness thinks the date, alleged in the bill of complaint and admitted by the answer that the map that he speaks of was filed on August 20, 1868 in the office of the Secretary of the Interior is correct. Dur-

ing the year 1867 witness canvassed among the people of Washington and Multnomah Counties for subscriptions to the stock, and anything to get donations of land or anything that would give the Company a showing of property on which it could get money. Witness put in the time that way and after he quit, Captain Ainsworth took up the work and got subscriptions to the stock among the business men of Portland and the work of soliciting subscriptions to the capital stock was continued after what he considered to be the organization in May 1867. He did not have any other business and prosecuted that as diligently as he could. Nothing was done during the year 1867 in the way of construction work, and nothing was done in the way of construction until after Captain Ainsworth got some $50,000, he thinks it was, subscribed in Portland, it might not have been more than $25,000, but they were all cash subscriptions and when that was completed, the Company commenced work. There was nothing done during the year 1867 by the East Side Company in the way of construction, or preparation for construction, and witness thinks the East Side Company did not succeed in getting any subscriptions among the people. What efforts the East Side Company made he does not know, but Elliott went east after their organization, that has been described and endeavored to raise money there by the sale of these bonds that they offered. This general controversy that he has spoken of as to the right of the East Side Company to use the corporate name of the Oregon Central

Railroad Company was carried on throughout the year 1867, but was not so bitter as the succeeding year. The West Side Company broke ground on the 15th of April, 1868, and the East Side Company the next day. Witness further testified that as a result of his work, with the assistance of Mr. Ainsworth, the financial means of the West Side Company for carrying on the work of construction at the time it commenced construction on April 15, 1868, both as a cash donation and guarantees of interest on bonds etc. was as follows: "The most important item in the assets of the Oregon Central Railroad Company (West Side) was ten blocks of land here in the north end of the City, donated by the Couch Estate on condition that we make that the terminus of the line. Then there were various pieces of land in South Portland donated—Judge Marquam, I think, donated some, and other parties; and then there was the subscription list of Captain Ainsworth, which was immediately available, and probably was more important than any of them, because it was ready cash. We didn't have any cash in the treasury—never had any there—but we had these assets. Then in Washington County a great many men had made donations of land. There was one piece of land donated that is now inside of the town of Hillsboro, that was sold. It wasn't sold for very much then, but it was a valuable piece of land; and there were other tracts of land around over the country. And Mr. Newby had succeeded in getting donations of land himself, and Robert Kinney, I think, to the amount of about $12,000 at McMinnville. Altogether I suppose that these items amounted in value to $100,000."

Whereupon witness further testified that during the same session of the Legislature that adopted the resolution of October 10, 1866, it passed an Act guaranteeing the interest on a million dollars of the Company's bonds, but witness thought the conditions of that Act were that as each 20 miles of road was constructed the Company would get so much of these bonds guaranteed. There was a guarantee by the City of Portland of interest on $250,000 of bonds and a like guarantee by Washington County of $50,000 of bonds and $75,000 of bonds by Yamhill County. This in a general way constituted the available and prospective assets of the West Side Company. The bonds, of course, were available as they constructed the road, the other matters they had in hand and could deal with. The East Side Company, in a general way, did not have anything at the time it commenced construction. It had no money, no subscriptions to stock that were available, no donations of land or anything else that he ever knew of. The West Side Company commenced construction at a place on Carter Street in South Portland. As to the assets of the East Side Company, Elliott had gone east on the basis of what his Company had done to raise means there. He succeeded in buying two locomotives of someone in the East and in getting rails for 5 miles of track, and these were sent out to Portland. The freight was not paid. Nothing was paid but they were shipped and it looked as if the East Side Company owned them. After they got the bills of lading for the rails and locomotives they went to B. Goldsmith in Portland and borrowed $20,000

and on that money they commenced work very close to where the car shops of the Southern Pacific are located on the East Side of the Willamette River in East Portland. It was then out in the country. There was no town there then but that piece of land had been donated to them on condition that they would start there and make their track there, or shops, or something. He thinks it was in Tibbetts Addition, about one mile this side of the car shops. Mr. Tibbetts made the donation. It was on his land and he took a very active part for the East Side Company. During the year 1868 the West Side Company built the big bridges on the first five miles and graded the first five miles of track and the East Side Company, during 1868, commenced in East Portland, built a little showing of track along there and along out on their line up towards Oregon City, but he don't know how much work they had done because he never saw it. During the year 1868 the controversy continued between the East Side and West Side Companies. This controversy was carried on by witness and his associates undertaking to stop the East Side Company in every way they could. The East Side Company had located its right of way this side of Oregon City across a man's land that would not consent and they got this man to assist the West Side Company in fighting the East Side Company and the attorneys of the West Side Company answered for this man, denying that the East Side Company was a corporation. The East Side Company did not try the case, but made a new survey and went around the man's land and they

got rid of it in that way. Then the West Side Company brought a suit in Marion County Circuit Court to enjoin the East Side Company from the use of the corporate name. Richard Williams acted as attorney for the West Side Company and Judge Boise declined to grant any relief on the ground that no pecuniary damages had been alleged or shown by the West Side Company, (and another reason was that he did not see such men as W. S. Ladd sitting around interested in the case,) so he turned the West Side Company down. The West Side Company questioned the incorporation of the East Side Company at Portland in Multnomah County. District Attorney Mulkey brought an information questioning their right to act as a corporation, this being a quo warranto proceeding. On some technicality Judge Upton denied the writ. Judge Upton had been down to the office of the West Side Company and wanted Captain Ainsworth to take some interest in it, as this was an important matter and Ainsworth wanted to know what sort of interest they could take. Upton said they could give him some of their bonds. Ainsworth told Upton that they were not in that kind of business. They did not get any decision from Upton on their side of the case. It was then concluded that they would bring the case of Newby—William T. Newby had a son in San Francisco who was a lawyer—and they assigned to him a bond and upon this a suit was commenced before Judge Deady, and this suit was prosecuted until Deady made his decision that the East Side Company had no right to use the corporate name

of the West Side Company and knocked them out. In addition to legal proceedings which he and his associates caused to be instituted, this general controversy was also carried on by public meetings, circulars and newspaper articles. They not only published from time to time over the authority of the Company statements respecting the East Side concern and its illegitimacy but especially pamphlets. The East Side Company published a pamphlet and the West Side Company published a reply to it, but the newspapers on the West Side of the Willamette River, with one exception, took up the controversy and espoused the cause of the West Side Company while the newspapers of the East Side of the River, if they said anything, were generally in favor of the East Side Company on their side of the River. The most of them did not say anything in behalf of the East Side Company. In addition to that public meetings were held at Corvallis and other points and witness attended the meetings generally representing his Company but some of them were attended by Mr. Newby and some by Lair Hill who was one of the attorneys for the West Side Company. John H. Mitchell and Mr. Elliott represented the East Side Company and attended some of those meetings. The West Side Company projected its line of railroad on the West Side of the Wlilamette River and the East Side Company on the East Side of the Willamette River and these two names East Side and West Side had reference to the Willamette River. In a general way the nature of this controversy between the East and West Side Companies and the particular

questions that were discussed in the newspaper articles, in public meetings and otherwise, were two main points. First, that the East Side Company was not a corporation but a fraud; that it was a violation of the law and it had no legal existence and was simply a nuisance in the way of the West Side Company in carrying out its legitimate work and that it was injuring the prospects of the State and the Company in getting the land grant, and that the West Side Company was really entitled to that land grant. These were the three points that were brought up everywhere and discussed. Of course the personality of the parties engaged was to some extent involved and there were a good many bitter things said on both sides. The East Side Company's contention, in a general way, was that the West Side Company had not complied, that they never were legally organized in time to receive that designation, and therefore never had any right to the land grant, and that after, of course, they were recognized by the Act of Congress of April 10, 1869, that they had as much right to contend for the land grant as the West Side Company had. Witness identified "Government's Exhibit 108" as one of the circulars that was sent out on behalf of the West Side Company, signed by witness as its president, in connection with that controversy. This was distributed to the extent of thousands of them, sent to all the leading men in Oregon, to banking houses, brokers and railroad material men in Eastern Cities and was issued and circulated with the authority of the West Side Company.

Whereupon witness identified the document that was presented to him as a circular printed by the East Side Company during that same controversy marked "Government's Exhibit 104." The last named document is dated 1868 but is not signed by any one at all but was circulated by the Salem people. The witness identified a memorandum on the back of this circular in his own writing that says it was about May 1, 1868, and refreshing his recollection by this notation says that the circular was published and circulated about May 1, 1868, generally. It was sent to a great many people all over the Willamette Valley. Whether it was circulated outside of the State witness has no means of knowing, but there were a great many copies sent to them from friends of the West Side Company up in the Willamette Valley.

Whereupon the complainant offered in evidence "Government's Exhibit 103," to which defendants objected as immaterial, irrelevant and incompetent and particularly in this that it is a self serving declaration and not competent to prove the alleged facts recited therein and does not appear to have been authorized by the Oregon Central Railroad Company of Portland, heretofore marked by the Examiner for identification "Government's Exhibit 103, and which said "Government's Exhibit 103" is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Government's Exhibit 103."

Whereupon the witness further testified as to "Government's Exhibit 104," that he had no definite knowledge or authority from which he could say that the same

was published and circulated with the knowledge of the East Side Company, but witness believed it was so published and circulated and everybody believed it but there was no definite knowledge or authority that he could refer to, to say that the East Side Company had authorized it. The same general arguments appearing in this circular "Government's Exhibit 104" were made by John H. Mitchell and others representing the East Side Company in the public discussions that took place between witness and others representing the West Side Company, and this circular represents the arguments that were used against the West Side Company. The East Side Company had some men at work right straight along from the time it commenced construction during the year 1868, but he does not know how many men there were, there never was a very large force. They got out of money and had to sell the locomotives in California to continue the work. Mr. Elliott was in charge of the work on the East Side Railroad at that time.

Whereupon the complainant offered in evidence "Government's Exhibit 104" heretofore marked by the Examiner for identification "Government's Exhibit 104" and which said "Government's Exhibit 104" is hereinafter set out and described and made part of this Statement of the Evidence and identified as "Government's Exhibit 104."

To which defendants objected as heresay, incompetent, immaterial and irrelevant and as containing self-serving declarations, and not proven to have been authorized by the Oregon Central Railroad Company of

Salem (East Side Company) and that such document cannot be used to prove substantive facts therein stated.

Whereupon witness further testified that there was another pamphlet after that on behalf of the East Side Company distributed during the year 1868, and witness identified "Government's Exhibit 105" as such circular or pamphlet. It was generally circulated throughout Western Oregon, particularly the Willamette Valley and witness thinks it was taken to Washington City.

Whereupon the complainant offered in evidence "Government's Exhibit 105" heretofore marked by the Examiner for identification "Governments Exhibit 105" and which said "Government's Exhibit 105" is hereinafter set out and described and made part of this Statement of the Evidence and identified as "Government's Exhibit 105" to which defendants objected as incompetent, immaterial and irrelevant and a self-serving declaration incompetent to prove any substantive fact stated therein and as not shown to have been authorized by the Oregon Central Railroad Company of Salem (East Side Company.) These were the only two statements that witness knew of that were circulated ostensibly on behalf of the East Side Company during the year 1868. Elliott had charge of the work on the East Side road from the beginning under a contract of construction given to A. J. Cook & Company, which A. J. Cook & Company was a myth; there was no one but Elliott. It was a contract with himself. Elliott was in charge of the work throughout 1868 but when Holladay came up to Oregon and took over the affairs Elliott

remained a director of construction forces for a short time but they soon quarreled and Elliott was ousted and had nothing further to do with the Company and as to financial affairs he had nothing to do with that after Holladay came. Elliott was superseded entirely by Holladay. Witness cannot tell the date Holladay came, but just as soon as he came to Oregon his financial man was George W. Weidler. He was Holladay's right hand man and made all payments in money after that. Holladay came to Oregon after the East Side Company began construction and after it had graded, as he thinks, as far as the Clackamas River. It was in the latter part of the summer of 1868 witness thinks when Holladay came. Whereupon counsel for complainant and dedefendants agree that it was September 12, 1868.

The general recollection of the witness was the same as shown by the records of the East Side Company, that Holladay took control of the Company by assignment of the contract with A. J. Cook & Company on September 12, 1868. Prior to that time the East Side Company had not, to his knowledge, made any claim to the land grant.

Whereupon the witness further testified as follows:

"Q. In the circular Government's Exhibit 104, which you say was circulated about May 1, 1868, it is stated as follows: "The charge has been extensively circulated that we are seeking to defraud the West side of the river of a valuable franchise—of State and Government aid—in answer to which we have only to say,

that we recognize that the Act of Congress granting lands, and the Act of the last Legislature of Oregon, are both inoperative, from the fact that the terms and stipulations of those Acts have not been, and cannot be, complied with. Any aid to be granted railroad enterprises in Oregon must be re-enacted by both State and General Government, and we have no hesitation in affirming that we claim no grants, privileges, or rights for our Company, we do not desire also extended to the West side of the valley.' I will ask if that represents fairly the general contention urged on behalf of the East Side Company during the controversy, prior to the time that Mr. Holladay became connected with the transaction.

Mr. Fenton: Objected to as immaterial, incompetent, irrelevant and as not binding on either Company.

A. I think it does."

Whereupon witness further testified that the controversy took this direction after Holladay came in that witness and his associates were soon apprised of the fact that Holladay was going to make an effort in the Legislature to have the Company that he was connected with either designated to receive the land grant or measures or action taken leading in that direction. The Legislature met every two years at that time in September, so that there was a session convening in September 1866 and the next session in September 1868 and the matter was carried before the Legislative session which con-

vened in September 1868. Both Companies appeared before the legislature and carried on the fight in the Legislature. The leaders that addressed the legislature on behalf of the Companies were John H. Mitchell for the Salem Company, the East Side Company, and James K. Kelly on behalf of the West Side Company. Holladay was in Salem and kept open house. Witness only knew from hearsay the manner of Holladay's campaign, he never was at his caravansary, but Holladay had quite a number of hired men there to work with members of the legislature, and after witness sold out his interest to Holladay the latter admitted to witness what Holladay had done there to beat them.

Whereupon witness being asked what Holladay said, counsel for defendants objected to that as not binding on the East Side Company as a corporation and as incompetent, irrelevant and immaterial.

Whereupon the witness answered that "he told me that it cost him $35,000 to get that action of the legislature in behalf of the East Side Company, and he told me the sums of money that he paid to some of the members of the legislature."

Whereupon counsel for defendants moved to strike out this answer as incompetent, immaterial and irrelevant.

Whereupon the witness further testified that this statement was made to him in the fall of 1870, or sometime between July and the fall, witness cannot tell the exact time. It was in one of his interviews in Holladay's

house on Third Street and Holladay was at that time president of the Oregon & California Railroad Company.

Whereupon counsel for defendants renewed the motion to strike out this testimony upon the ground that the declaration of Holladay could not be binding upon the Oregon and California Railroad Company and that it was not authorized.

Whereupon said witness further testified that this fight that was carried on in the legislature in the fall of 1868 finally resulted in the resolution of October 20, 1868, which in terms rescinded the former designation of the West Side Company and made a new designation in favor of the East Side Company. When the fight in the legislature started, the work of construction continued by both Companies. Witness thought that "Government's Exhibit 105" was not circulated on behalf of the East Side Company until after the legislature adjourned. That is his recollection. If it was circulated, it was circulated secretly. He did not see it until after the legislature adjourned. After the legislature adjourned, the fight was carried into Congress. The East Side Company employed Mitchell and witness thinks Chadwick to go to Washington City and present the matter there before Congress and the West Side Company sent Simeon G. Reed to represent its interests but witness did not go and was not in Washington during the time the matter was before Congress. He did not go until after the fight, until after they had got the

enabling act passed Congress, meaning the Act of April 10, 1869, and after they had practically complied with the act in constructing 20 miles of road. Then, witness went on to Washington City to get the new grant from Portland to McMinnville with a branch to Astoria. He went on to Washington in December 1869, and stayed there until May, 1870, but had only hearsay knowledge as to whether "Government's Exhibit 105" was used before Congress. He heard what he knew from Mr. Reed, their agent there. Reed represented that they had given copies of this to all the members of Congress and Senators.

Whreupon counsel for defendants moved to strike out the answer of the witness as hearsay. Witness further testified that he had a conversation with Senator Corbett on this subject and he told him the same thing but does not recollect that he ever had a talk with Mr. Holladay about it.

Whereupon counsel for defendants renewed his motion to strike out all of said testimony as hearsay and incompetent.

Whereupon the witness further testified that there was a circular prepared on behalf of the West Side Company for use before Congress in reply to "Government's Exhibit 105" and which was used before Congress, also with an additional statement made by Mr. Reed and thinks—but does not know—some other person joined with Mr. Reed in that statement.

Whereupon witness identified that circular as "Government's Exhibit 106" and testified that he wrote the

circular himself after he had seen "Government's Exhibit 105." That he had "Government's Exhibit 105" before him when he prepared "Government's Exhibit 106" and it was prepared for use before Congress and was prepared in January 1869. January 19, 1869 is approximately the correct date and it was authorized by the Company after he had written it.

Whereupon complainant offered in evidence "Government's Exhibit 106" to which counsel for defendants objected as incompetent, immaterial and irrelevant and as a self-serving declaration in favor of the Oregon Central Railroad Company of Portland, West Side, and as not competent to prove any probative or ultimate fact therein stated and as a narrative of alleged past events, as not authorized by the Oregon Central Railroad Company of Portland and as not used or circulated among members of Congress prior to vesting of the rights of the Oregon Central (East Side) to the grant of July 25, 1866, by the designation made by the joint resolution of October 20, 1868.

Whereupon the complainant offered in evidence "Government's Exhibit 106" heretofore marked by the Examiner for identification "Government's Exhibit 106" which said "Government's Exhibit 106" is hereinafter set out and described and made part of this Statement of the Evidence and identified as "Government's Exhibit 106."

Whereupon the witness further testified as follows:

"Q. Well, the controversy in Congress finally re-

sulted in the passage of the act of April 10, 1869?

Mr. Fenton: Objected to as calling for a conclusion and not for a fact.

A. Yes, sir."

Whereupon the witness further testified that after the act of April 10, 1869 was passed the East Side Company pushed its construction work more vigorously than before and the West Side Company completed temporary grading from the end of the five mile post on its line to the town of Hillsboro during that summer, but the West Side Company did not lay any track whatever prior to December 25, 1869, and the East Side Company completed its first section of 20 miles on December 25, 1869. He does not recollect doing anything on behalf of the Company with reference to the land grant under the Act of July 25, 1866 after the West Side Company failed to complete its first section of railroad within the time required by the granting act. If they did anything it has escaped his memory; that is, anything with reference to the land grant. The condition of the financial resources of the West Side Company in the fall of 1869 were very limited. It received its financial backing from the sources witness has already mentioned and the Washington county people had collected some money on their stipulation to pay interest on the bonds, which was turned over to the Company. The City of Portland had collected $10,000 or $12,000 on account of the interest it had stipulated to pay and it was turned over to the Company, and the Yamhill people, he thinks,

never levied any tax to collect the interest on bonds they had endorsed. The Company, by its own officers, carried on the work of construction on the West Side Railroad down to the fall of 1869. They had no contract with any one except the contract for the construction of the bridges which had been let to Stephen Coffin who had, under his contract, constructed the bridges on the first five miles of road. Witness had forgotten, but they had a contract with S. G. Reed & Company to construct, he thinks, 150 miles of road, which the witness thinks was dated in the fall of 1868, and this was one of the reasons that Reed went on to Washington to get the land grant to support that contract. After the act of April 10, 1869 was passed this contract was abandoned, and the Company was again thrown on its own resources. The Reed contract came to be entered into in this way. While witness was engaged in directing the work and expending the money that they had on the West Side road, Edwin Russell, manager of the Bank of British Columbia, said to him that he, Russell, was going back to London on a visit and if witness would give him a power of attorney he would see if he could raise any money for him in London on his bonds. Witness did not think there was much probability of his being able to do anything, but talked the matter over with Captain Ainsworth who thought, with himself, that they could not raise any money in any money market on their bonds as long as they were in litigation in the way they were with the East Side Company, but they decided that it would do no harm anyway and so they made out the

power of attorney to Mr. Russell to sell $500,000 of the Company's bonds in London. Russell went on there and to their great surprise within 30 days after he reached London cabled back that he could sell $500,000 worth of the Company's bonds at sixty five cents on the dollar cash and asked him to answer promptly whether they would take it. Witness showed the cable to Ainsworth who said to give him 24 hours to think about it and witness replied "All right," and went out to the country and gave him his 24 hours. Next day, not receiving any *answer* from witness Russell, knowing that Ainsworth was interested with him in the road cabled Ainsworth who replied declining the offer. Witness very greatly regretted this action and told Ainsworth that he thought it was a great mistake, that that would put the Company in funds to finish their 20 miles of road and get the land grant and Ainsworth said if they sold bonds at that rate they never could sell any more. On account of the disappointment to witness in that London transaction Ainsworth induced Reed to go into the contract to construct 150 miles of the road. When Mr. Reed came back from Washington and failed to get the legislation in shape that he wanted, or prevent the legislation of the East Side Company, the West Side Company abandoned the contract with S. G. Reed & Company and it was apparent to witness then that they would not be able to build the road in time. That is the first section of its railroad in compliance with the Acts of Congress. Subsequently they took steps to get another land grant. With the means he had he kept up work on the road

until the temporary grading was finished to Hillsboro and then Captain Ainsworth gave witness $1,000 to go back to Washington and see if he could get a subsequent land grant in aid of the West Side Company. Before he went back he had a talk with Senator Williams upon the subject.

Whereupon witness being asked to give the substance of that conversation, it was stipulated between counsel for the parties that this testimony should be subject to the objection of the counsel for defendants as incompetent, irrelevant, immaterial and as hearsay.

Whereupon the witness further testified as follows:

"A. Well, in Congress the senatorial representation from Oregon was divided. Mr. Corbett was an active friend of the West Side Company, and Mr. Williams assumed friendship to the East Side Company, and was instrumental in getting through the act of April 10, 1869; and for that action of Senator Williams, he was very generally condemned on the West Side of the river in the Willamette Valley, by the West Side people, and by a great many men in Portland. And when he came back to Oregon, he felt that more than ever and he came and had an interview with me at my office in Portland, and to defend himself for his course in Congress, and then wound up by saying, 'Now, I will show you my good faith and friendship for your company by doing everything I can to get you another grant,' and advising me to go to Washington, and be there and render him any assistance I could."

Whereupon the witness further testified that this conversation took place about the 20th of December, 1869, Congress meeting on the first Monday in December. Witness went to Washington pursuant to the suggestion of Senator Williams. Captain Ainsworth gave him $1,000 to defray his expenses there and witness went to Washington and arrived there about 15 days after Congress convened in December, 1869, and after that time the West Side Company never made any claim to the grant under the Act of July 25, 1866. Witness stayed in Washington until May 1870, but as soon as the second land grant bill was passed on May 4, 1870 he left Washington and came back to Oregon, leaving 4 or 5 days after May 4, 1870. During that winter, for the purpose of procuring the passage of that bill, witness met with the Committee on public lands repeatedly and discussed the proposition. The bill was drawn up by Judge Olney. When witness got to Washington he found that Cyrus Olney, of Astoria, had gone there for the purpose of getting a land grant bill in aid of a railroad to Astoria. Witness had not heard of that before leaving Oregon, but when he arrived at Washington Judge Williams told him of that and told him to have an interview with Judge Olney and combine their interests; that it would not do to have two bills, one for his Company and one for Olney's Company, and that they must get together and combine their interests and work together. Witness did that. He had an interview with Judge Olney and they immediately agreed upon a bill for a land grant from Portland to Eugene City on

the West Side of the Willamette River, with a branch from the main line to Astoria, from the vicinity of Forest Grove, and that bill was introduced by Judge Williams. After it was introduced, Mr. Holladay came on there and wanted to get a land grant for himself from Portland to Tacoma and the Northern Pacific people immediately commenced to "oppose our bill" with the belief that "we could knock out Holladay" because they wanted the land grant between Portland and Tacoma. Witness had numerous interviews with the representatives of the Northern Pacific and finally agreed with them that witness and his associates would work for the Northern Pacific land grant and the Northern Pacific representatives would work for theirs and put Holladay out of the ring. Witness then had meetings with the Senate and House committees on public lands and this bill for their Company was drawn up by Judge Olney and before the House Committee. Witness had frequent interviews with George W. Julien, who was chairman of the Public Lands Committee as to the features of that bill. Witness worked also with members of Congress. Sam Cox was an old friend of his from Ohio and John A. Bingham likewise. Bingham made a speech in the house for the bill and Sam Cox, notwithstanding his old friendship, and while witness had helped elect him to Congress, opposed the bill. He did not do it very bitterly but said he had to maintain his record that he was opposed to land grants. Witness had to talk to a great many men. The sentiment in favor of land grants to railroads was about dead and that was

the last bill that Congress ever passed in favor of land grants to railroads.

"Mr. Fenton: That was May 31, 1870?

Mr. Townsend: May 31, 1870. There was one March 1, 1871, the Texas Pacific.

Mr. Fenton: The one he refers to between Tacoma and Portland, in favor of the Northern Pacific, was May 31, 1870. That is the Northern Pacific Resolution.

A. Well, they were all agreed to at that same time, I think, before the committees. I thought our bill was the last one, and that they got theirs through first."

Mr. Fenton: No, yours was first."

Whereupon the witness further testified that the bill for the second grant which may be called the West Side grant, as originally introduced in Congress called for a grant along the west side of the Willamette River to Eugene and there was another proposition introduced in Congress to extend that grant. After witness had been in Washington two or three weeks or more, B. J. Pengra, of Eugene City, came on and made known to Williams that he wanted the land grant for a railroad over the line of the Oregon Central Military Wagon Road land grant, so as to provide for the construction of a railroad from Winnemucca in Nevada to Eugene City, Oregon. This was somewhat embarrassing, and they all had a meeting that were interested in these things at the house of Tom Fitch, who was a member of Congress from Nevada. Pengra had succeeded in interesting

Fitch in the proposition very much, and it was there agreed—at the house of Fitch—Fitch being Pengra's particular friend in the matter, that Pengra should have a land grant from Winnemucca to Eugene City, and that the West Side road, the Oregon Central Company, should have the land grant from Eugene City to Portland, with the branch from Forest Grove to Astoria, which would satisfy Judge Olney; and the land grant to Eugene would satisfy the old West Side Oregon Central Company; and the land grant from Eugene to Winnemucca would satisfy Pengra and his friends and the stockholders in the Oregon Central Wagon Road. When Holladay came into the field he objected to the land grant going any further than McMinnville, in fact any further than Forest Grove for the reason that it would prevent him, Holladay, from selling his bonds on the East Side road and defeat his enterprise, notwithstanding he would get the old land grant because it would be paralleling his line, and would possibly interfere with his land grant, so that Holladay induced Judge Williams to cut off the West Side land grant at McMinnville, under the promise that after he, Holladay, had sold his bonds, at the subsequent session of Congress, witness and his associates should have the gap between McMinnville and Eugene filled up with an additional grant. The bill providing for the grant from Eugene to Winnemucca was then pending in Congress. Winnemucca is on the Central Pacific, so that the plan would have made a continuous line from Portland to the East. There was a change in the legislation after witness left

Washington which had effect upon the future history of the West Side Railroad. Witness left Washington, he thinks, about the 7th or 8th of May and stopped at Wheeling, and at Belmont County, Ohio and then came to Oregon. When he got to Umatilla he received a telegram from Pengra to come back to Washington immediately, that Williams had backed out of his agreement and had introduced an amended bill for Pengra's road, compelling it to connect with the Oregon & California Railroad in the Rogue River Valley and that was the change. That amended bill was brought in in favor of Pengra's road. There was no change in the branch, or Astoria's interest.

Whereupon witness further testified as follows:

"Q. Well, now what promise of financial assistance, if any, had you had, that was withdrawn from you because of that change in the plan?

A. Well, before we had the meeting at Tom Fitch's house, Pengra brought Mr. C. P. Huntington, who was at the head of the Central Pacific Company over to Washington City to satisfy Judge Williams that he could get the money to build that road; and Huntington authorized the statement, and made the statement there, that if Congress would pass the land grant as Mr. Pengra desired it, and as it was agreed upon at Tom Fitch's house, he would finance the proposition and build the road to Oregon immediately from Winnemucca."

Whereupon witness further testified that the Pengra

bill was never passed and no effort was subsequently made to extend the grant of the West Side road from McMinnville to Eugene.

Whereupon witness further testified as follows:

"Q. Did you have any other prospective financial support than the assurance of Mr. Huntington at the time you returned to Oregon? That is, I mean, of any substantial character?

A. Well, I had a contract with some people in Philadelphia to build the railroad to McMinnville.

Q. And when did you make that contract?

A. While I was in Washington City.

Q. The records of the West Side Company disclose that it was on January 19, 1870. Is that approximately correct?

A. I expect it is. I don't recollect the date."

Q. Well, now, at that time did the West Side Company, as represented by you as its president, have any intention or purpose of claiming any further benefits, making any further claim of benefits, under the act of July 25, 1866?

Mr. Fenton: Objected to as immaterial, and as incompetent, and as not a waiver of any rights which the West Side Company may have obtained by what it did, under what record it had made.

A. No, we never asserted any further rights in the old grant; never expected to get anything from it of interest to us.

Q. And when this contract was made with the Philadelphia people in January, 1870, did that have reference to the former grant, or to the grant that you expected to get?

A. It had reference to the grant we had and what we had promised to get. The Philadelphia people had sent a man over to Washington to see whether we were likely to get what we claimed.

Q. Was that contract an absolute contract, or was it contingent upon your securing the new grant?

A. No, it was an absolute contract. They sent out an agent here to look the ground over afterwards.

Q. Well, now, what became of that contract?

A. Well, it was abandoned when Holladay bought the majority of the stock in the West Side Company."

Whereupon witness further testified that Holladay bought a majority of the stock in the West Side Company in June or July, 1870, shortly after witness returned home from Washington and he was induced to dispose of his interest in the West Side Company because they were in debt very much, and Holladay had bought up claims, and there were threats to bring bankruptcy proceedings against the Company and witness knew that that would be the end of the Company if they

did, as they were not in position to pay at that time. Witness had negotiations with Holladay and when they got to that state of affairs he had quite a negotiation with Holladay, through other parties before witness met him and these negotiations finally resulted in a specific proposition that Holladay would give witness $50,000 for his interest in the Company, as he had control of the stock. The proposition was verbal and conveyed to witness by Ben Simpson. Afterwards witness talked the matter over with Holladay for several evenings and Holladay confirmed the proposition Simpson made to him. Simpson was present. They had quite a discussion over the proposition. Witness was in debt on account of railroad business something over $40,000 and wanted these debts cleared off and the question was whether to get Holladay to go into a hard and fast proposition. He would pay the debts and give witness the balance in money, as witness had bought a homestead in King's Addition and wanted to build a house for a home. The proposition was in three parts; that Holladay would pay all the debts of witness and pay him the balance in cash and would keep the witness in the employ of the Company for five years at $250 per month. The debts referred to meant the debts of the West Side Railroad Company, for which witness was responsible. The negotiations finally resulted in an agreement. Holladay agreed to the terms of witness. Holladay first offered to keep witness in the employ of the Company as long as he wanted to stay. There was no trouble about that. And would settle the debts of the Company, but he first

wanted witness to take 100 feet square on the southeast corner of Alder and Fourth Streets for the $8,000 cash, but witness declined that. Then Holladay offered him land in the land grant, a township of land, and witness told him he could not give him any; that he did not have any right under the Act to dispose of the land that way. Witness told him that under the provisions of the Act it would have to be disposed of to actual settlers; that he did not propose to go out there and be an actual settler for 160 acres of land. Holladay finally agreed to pay the debts and give him the $8,000 and keep him in his employ, but after it had run a year or so and Holladay had not paid the debts and witness got the proxies of the London stockholders in the company into his possession and elected a Board of Directors, then they had a fight for the possession of the road and the fight was kept up. Judge Shattuck issued injunctions in favor of witness and his associates and Holladay and his associates got injunctions in favor of their side and it was hard to tell who had possession of the road for awhile. They had two boards of directors and two superintendents and Holladay and his associates threw the men of witness and his associates off the trains and their men threw Holladay's men off the trains. Finally Latham of San Francisco, who had raised all the money for Holladay, interfered and arranged with Mitchell, who was coming back from Washington to come up and have the debts paid off. Holladay finally authorized the money to be paid to Colonel Cornelius to pay off the debts and Cornelius went out and paid off all the debts. Another

proposition that was in dispute was that Holladay had refused to establish stations at Hillsboro and Forest Grove and wanted to build a town at Cornelius and pull down those two towns, and they had to have that settled, so it was agreed that those two towns were stations and Cornelius paid off all the debts and then the Board of Directors of witness and his associates surrendered and that was the end of the connection of witness with the West Side Company, or the East Side Company either. He never had any connection with railroads afterwards, except to help the Southern Pacific in some of its right of way cases and damage cases and that way. Witness was general freight and passenger agent for the West Side road for several years—three years or more—and had charge of Holladay's real estate companies and edited a daily paper—The Bulletin. Holladay was at the head of the affairs of these two railroads after witness sold out to Holladay. Halsey was Holladay's vice president and George Weidler was a general utility man and they ran the business until the German bond holders sent Mr. Koehler out here and then Holladay did not have so much to say.

Whereupon witness further testified as follows:

"Q. Now, Mr. Gaston, I want to call your attention briefly to a few of the issues raised by the answer of the defendants in this case, and, supplementing your former testimony, I want you to tell us what you can upon those disputed questions, avoiding repetition, so far as you can, of your former testimony. It is charged in the bill

of complaint that a controversy arose between the East Side Company and the West Side Company as to which of the two companies was entitled to the land grant after the resolution of the Legislature of Oregon of October 20, 1868, was passed. The answer admits that a controversy arose, but alleges that it arose at about the time of the incorporation of the East Side Company on April 22, 1867. What is the fact?

A. Why, the controversy arose about the name as soon as the East Side Company was incorporated, and it never stopped until it was apparent that the West Side Company could not earn the land grant. It was a continuing controversy.

Q. As to the name?

A. Yes, sir.

Q. But when did the controversy as to which company was entitled to the land grant arise?

A. Well, that arose as soon as the East Side Company appeared in Congress and wanted to put in its—well, as soon as the legislature passed the resolution declaring that we had not received a lawful designation, it was apparent then that they were going to take steps to get the land grant, and the controversy about that arose then.

Q. Prior to that time had they made any claim to the land grant, so far as you know?

A. No; they had disclaimed any claim to the land grant.

Q. Now, the bill of complaint alleges that after the East Side Company procured the passage of the resolution of October 20, 1868, which rescinded the former designation of the West Side Company, and assumed to make a new designation in favor of the East Side Company, the East Side Company applied to Congress for an extension of the time within which it might file an assent. The answer denies that the East Side Company applied to Congress. State what is the fact with reference to that, if you know.

Mr. Fenton: Object to that as incompetent, that the witness could not know, and that his information would only be hearsay, as he was not in Congres, not there, not a member, and did not go to Congress until December, 1869, after the loss of the land grant of July 25, 1866, by the West Side Company.

A. Well, I could only speak from hearsay and public report, that they were taking steps to claim the land grant. That is the way I understood it from my information.

Q. Was the subject discussed in the newspapers at that time here in Oregon?

Same objection.

A. Oh, yes.

Q. Were the proceedings in Congress upon the subject discussed in the newspapers?

Same objection.

A. Oh, yes, they were all published and discussed by everybody interested in those things.

Q. State whether or not the general newspaper discussion disclosed whether representatives of the East Side Company were in Washington soliciting the passage of a new act.

Objected to as hearsay and incompetent.

A. Yes, from time to time there were publications, by telegrams from Mitchell, as to the proceedings as things went along, and letters published as things went along, and when the act was finally passed in their favor, why, Mitchell and Chadwick sent a telegram to the Oregonian that they had gained everything they claimed—something like that.

Mr. Fenton: I object to that as not the best evidence.

Q. Now, did any officer or representative of the East Side Company ever, to your knowledge, dispute or deny any of those reports, or telegrams, or letters?

Objected to as immaterial.

A. No; not that I know anything about, no.

Q. It is also alleged in the bill of complaint, and

denied by the answer, that the West Side Company appeared in Congress and opposed the application of the East Side Company for an extension of time. You have already identified the circular that you prepared for use in Congress upon that occasion. Have you any further information upon the subject?

Mr. Fenton: Same objection, and as hearsay.

A. Nothing more than the fact that we had sent Mr. Reed there for that express purpose, of opposing any claims of theirs, and Reed's letters to myself and Ainsworth and others.

Q. Did Mr. Reed ever report to you, or the West Side Company, the circulars or statements which he presented to Congress?

A. He sent me copies. He never made any official report. He sent me copies.

Q. Are these documents the ones that you refer to?

A. Yes. These are the two. I don't know of any others, but these are the two documents that I refer to: one 'Remonstrance' signed by Reed and the other 'Objections' signed by Reed."

Whereupon counsel for complainant requested that these two documents be marked "Government's Exhibits 107 and 108" respectively for identification and the same were so marked and were identified by the witness as the circulars received by him from Mr. Reed, sent

from Washington.

Whereupon the complainant offered in evidence "Government's Exhibits 107 and 108," to each of which counsel for defendants objected as incompetent, immaterial and irrelevant, and as self-serving declarations purporting to be made by S. G. Reed, and as incompetent to prove any substantive fact recited or claimed to be stated therein, and as not having been shown to have been authorized by the West Side Company. Which said "Government's Exhibits 107 and 108" are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibits 107 and 108."

Witness was thereupon shown a newspaper clipping and stated that it was a publication of the telegram signed by J. H. Mitchell and S. F. Chadwick, referred to by him in his previous testimony and included in an editorial notice of the matter in the Oregonian.

Whereupon counsel for complainant offered this newspaper publication of the telegram in evidence and asked to read the same into the record instead of identifying the same as an exhibit.

Whereupon counsel for defendants objected to the same as hearsay, incompetent, immaterial, irrelevant and as not binding on any one, waiving objection to the method of identifying the same; which telegram reads as follows:

"Washington, D. C. April 10, 1869.

Editor Oregonian: The East Side Railroad bill has passed both Houses and received the signature of the President. The victory is complete.

J. H. Mitchell. S. F. Chadwick."

Whereupon the witness further testified as follows:

Q. "Mr. Gaston, the bill of complaint alleges that the West Side Company failed to complete the construction of any of its railroad within the time required by the Act of Congress July 25, 1866, and the Act of Congress of June 25, 1868. The answer denies this fact. Which is correct?

A. Well, it did not construct any railroad within the time required.

Q. The bill of complaint also alleges that the West Side Company abandoned all claim to the East Side grant under the act of July 25, 1866, on or about the month of January, 1870 and in lien thereof applied for and received and accepted a new grant under the act of May 4, 1870. This is denied by the answer. Please state what is the fact.

Mr. Fenton: Objected to as calling for a conclusion, both of law and fact, and as incompetent.

A. The fact was that the company did abandon all claim to the Act of Congress of July, 1866, and accepted the new act of May, 1870, in lieu thereof.

Q. Who represented the West Side Company at that time? Who had authority to say whether the West Side Company should abandon all claim under the Act of July 25, 1866?

Mr. Fenton: Objected to as immaterial, and for the further reason that the record of the witness thus far taken, and his testimony, shows that the West Side Company was unable to complete the first twenty miles required by the Act of July 25, 1866, after the passage of the act of April 10, 1869, and that when that failure occurred Mr. Gaston, for his company and his associates, no longer made any claim to any interest in the grant of July 25, 1866, but applied for another and an independent grant, without regard to the grant of July 25, 1866, after such failure and loss of the East Side grant by failure to construct within time.

A. Why, the board of directors represented the company, and it was decided to apply for a new grant, without any reference to the old grant. There was no condition of abandonment one way or another. It was simply concluded that the company never could earn the grant nor get it, and the thing to do was to get a new grant, if possible.

Q. Mr. Gaston, it is alleged in the bill of complaint that the East Side Company became involved in litigation, questioning the validity of its corporate organization, and because thereof the East Side Company was in effect reorganized under the name of the

Oregon & California Railroad Company. The answer denies that the East Side Company became involved in any litigation questioning the validity of its incorporation. You have referred in your testimony to two proceedings of that character. Can you call to mind any other proceedings?

Mr. Fenton: Objected to as immaterial and not the best evidence.

A. I think I have stated that proceedings were instituted against the East Side Company to prevent them from using our corporate name, and to dissolve their alleged corporation, under the quo warranto acts of Oregon, in the State courts. Now, if I did not mention the proceeding by the bondholder Newby in the United States Court, why, that—

Q. You did.

A. Well, that is the only thing in addition to what was done in the State courts. That case was prosecuted against the East Side Company until Judge Deady decided the matter.

Q. Mr. Gaston, to what extent, if any, did the line of railroad adopted by the West Side Company under the act of May 4, 1870, from Portland to McMinnville by way of Forest Grove, differ from the route of the road that had been adopted in the first place by the company under the act of July 25, 1866, that is, between those two points?

A. It didn't differ at all. It was precisely the same."

Whereupon the witness further testified that in the settlement with Holladay in the summer of 1870, his stock was assigned to Dr. R. H. Towler, the private secretary of Ben Holladay, as he recollects it, and after this settlement with Holladay the affairs of the two roads were still conducted separately and two corporations were maintained. Witness was general freight and passenger agent of the West Side road when they kept the business separately. Had separate freight offics and a man to look after that whose name he has forgotten, but thinks the general bookkeeping was done by Mr. Cunningham in the O. & C. office. This man whose name he had forgotten was Major Hampton, and then there was another man besides him. Major Hampton was the bookkeeper of the West Side road until it was taken over in 1876. Witness knows he kept his office up at the other place, and that young man, W. S. Ward, had his office in the old freight shed and kept that business separate. That was about all the separation. The freight house of the East Side Company was on the east side of the river and the West Side Company on the West Side of the river; that there was no bridge in those days so that the two freight offices had to be maintained separately.

Mr. Fenton: Mr. Townsend, the general offices also were kept separately. I don't know whether Mr. Gaston meant to be understood as saying that there was

any combination, but, as I understand, the Oregon Central (West Side) offices were kept entirely separate from the Oregon Central (East Side).

A. Yes, as Mr. Fenton says, there was Major Hampton there for years, and there was another man, too. I have forgotten his name. I am just trying to get it clearly in my own head. It was all kept separate, and Mr. Peebles came out here from London to look into the matter for the London stockholders, and I know I went with him out over the road, and everything was kept separately from the other company.

Q. The earnings and everything?

A. I think so. I think there is no doubt about that. Mr. Peebles looked into everything very carefully."

Whereupon witness further testified that Holladay, after settlement with witness the real dominating head of the West Side Company until the German bondholders came and displaced him, and during that same period was the real dominating head of the East Side Company. He does not think there were any relations between Judge Williams and Holladay, except Williams' fear of Holladay's opposition and the influence of Senator Mitchell, whom Holladay controlled. Witness never thought that Williams had ever yielded to any pecuniary influence or anything like that, but the relations of Holladay and Williams were friendly. Aside from what witness has testified, he does not think that Senator Williams gave Holladay any other sup-

port in that fight. Judge Williams was perfectly aware that the majority of the people in Oregon were opposed to Holladay and his ways of doing business, and Judge Williams himself was not in favor of Holladay's corrupt schemes and his highway methods of doing business; but what he did was to placate his opposition rather than to help him along witness thinks. Witness was on terms of friendship with Holladay after his settlement with him and does not think that in his subsequent talks with Holladay he learned anything that would indicate whether the East Side Company was presenting these circulars and making that fight before Congress—he does not think that was ever mentioned between them. Holladay was in Washington during that fight in Congress. He went there every year. He had two purposes there. The first was to look after his railroad interests and the second to get the old "mule claim" paid, as they used to call it. He had a claim before Congress for a large sum of money for the mules that the Indians and the rebels ran off during the war. Alleged mules and alleged rebels.

Whereupon on cross examination witness further testified that he studied law at St. Clairsville, Ohio, and was admitted to the bar of the Supreme Court of Ohio at Newark, by Chief Justice Thomas W. Bartley, who presided over the District Court, which entitled him to practice in all the courts of Ohio, and on this certificate of admission he was admitted to the Bar of the Supreme Court of Oregon in September 1863, about a year after he came to the State. He had practiced at Jacksonville

since about July 1862, being admitted by Judge Prim, a Justice of the Supreme Court at that time, and a Circuit Judge, now dead, and continued his practice at Salem with John Cartwright, afterwards United States Attorney. He was in partnership with him about a year and practiced law to a certain extent with Judge Kelly, afterwards United States Senator from Oregon, and Chief Justice of the Supreme Court of Oregon. He practiced in his office after Judge Kelly retired from the bench in 1882-3 and 4. He was, to a certain extent, in touch with his profession from the time he was admitted to the Bar in Ohio until he retired from active business of any kind. At the time he became connected with the Oregon Central Railroad Company of Portland, called the West Side Company, he would not pretend to say that he was conversant with the land laws of the State, or in a general way with the land grants that had been passed by Congress, or the decisions of the Supreme Court of the United States up to May 4, 1870, because he would not have a knowledge of anything that he had not specially looked up. It was the understanding of witness and his associates that the construction of the first 20 miles of road was a condition necessary to earn the grant. That is to say, if the Company did not construct the first 20 miles, or any part of it, within the time, that by reason of the failure to construct, the grant would be lost and witness thinks that was a provision in the Statute and he thinks it was the general judgment of the legal profession at that time.

Whereupon witness further testified as follows:

"Q. Now, do you recall the case of Schulenberg v. Harriman, that was decided in the October term of the Supreme Court, 1874, reported in 21 Wallace page 44, that announced a different doctrine from that generally understood before that time?

A. No, I don't.

Q. You were not familiar with that case?

A. No.

Q. And you have not examined it since?

A. No, Never did."

Whereupon the witness further testified that the California & Columbia River Railroad Company was never organized. The incorporation papers were filed. Witness prepared them. It was an Oregon corporation. He cannot say whether the articles were filed in the office of the Secretary of State at Salem or whether they were simply executed, but thinks that they were filed.

Whereupon the witness further testified as follows:

"Q. Do you recall whether what is called the Barry Survey, which was printed in the form of a pamphlet, was survey of the California & Columbia River Railroad Company, or was it a survey under the name of the Oregon Central Railroad Company of Portland?

A. I don't think there was any particular—I ain't certain that there was any particular name to it.

Q. Well, you said in your testimony that there was a Barry Survey?

A. Well, that was a general name that got to be attached to it because he was a manager of the party going along with it. It never got to be—it was never any legal or corporate signification.

Q. This Colonel Barry's report, then, was a report that was made and printed, as you recall, and it is referred to in the legislative proceedings, I think the Journal of the Oregon State Senate, 1864, in the Appendix, pages 36 and 37, and also the House Journal of 1864, pages 185 to 189. Do you know of its having been considered by the Legislature of 1864?

A. Well, I think it was read there, or parts of it was read, and referred to, and I think that there was an effort made to have it printed by the state.

Q. Well, now, that was a report based upon what survey and whose survey, as you recall it?

A. That was Barry's survey.

Q. Well, what I am getting at is, is that the same surveying party that stopped at Jacksonville, when you took it up when they were stranded there, and they subsequently went on north to the Columbia River?

A. Yes.

Q. That is the same survey that you referred to in your testimony.

A. Yes.

Q. And that was made in what year?

A. 1864."

Whereupon witness further testified that he does not think that the California & Columbia River Railroad Company ever had any capital stock subscribed, or elected a Board of Directors, but that was a fact he does not think that Barry knew when he made his report. Witness prepared the articles of incorporation of the Oregon Central Railroad Company of Portland, West Side, and they were written out by him in Salem.

Whereupon the witness further testified as follows:

"Q. I call your attention to page 141 and page 142 of Volume 7, No. 2, of the Quarterly of the Oregon Historical Society, which purports to contain a copy of these articles of incorporation, and of certificates of acknowledgment, and file-mark endorsement by Samuel E. May, and ask you if the signatures to these articles—J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer, and H. W. Corbett were not all taken, and their acknowledgments taken by you as notary public, at Salem, on or about the 29th day of September, 1866, and while the Legislature of the State of Oregon was then in session?

A. Well, now, it don't say—

Q. Will you look at your certificate of acknowledgment so that you may refresh your memory?

A. Well, I suppose that that states the fact. As they were taken, they would sign and acknowledge from time to time; but that certificate was not made up until some time afterwards.

Q. The certificate bears date what date?

A. The 16th of November.

Q. 1866?

A. Yes.

Q. Then the names that I have mentioned were signed to that document sometime on or before the 29th day of September, 1866; that is correct, isn't it?

A. Yes, they were signed before, just as I could see them.

Q. And this certificate shows that M. M. Melvin signed these articles at Salem on or about October 23, 1866, or rather acknowledged it before you at that time —is that correct?

A. Yes. They acknowledged the signature.

Q. And the certificate further shows that George L. Woods, at Salem, on or about November 10, 1866, acknowledged these articles. Now, when did Woods sign the articles? At what date?

A. Well, I suppose so, but I wouldn't say positively. I suppose that states the fact. There is some of them signed after the articles were first filed.

Q. I notice that the certificate recites that R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCracken, and C. H. Lewis acknowledged the execution of these articles on the 16th day of November, 1866, and it is certified by you under date of November 16, 1866, that they then and there, at these several times set forth in this certificate, did sign and seal said articles before you, and in your presence, and acknowledged the same. Is that according to your recollection?

A. Well, I think that that certificate there states it about as it was.

Q. States the facts?

A. Yes, I should say so.

Q. Now, I notice that on the 20th day of November, 1866, Seth R. Hammer certifies that B. F. Brown, Thomas H. Cox, and J. Gaston, personally known to him to be the identical persons whose names are subscribed to that document, acknowledged to him that they signed the same for the purposes therein set forth. When did Brown and Cox and Gaston sign with reference to that date?

A. I think that day.

Q. Now, the J. Gaston mentioned in that certificate is the same J. Gaston whose name appears last on the articles of incorporation, and that is your name?

A. Yes.

Q. Now, at the time that you went into the Secretary of State's office and delivered one copy of these articles of incorporation to him, being Samuel E. May, and as you say asked him to file the document, whose name, as you now recall it, were on the articles?

A. I think all of them above that of Mr. Corbett.

Q. It would be including Mr. Corbett?

Mr. Townsend: Including Mr. Corbett.

A. Well, maybe including that.

Q. All of those that you certify acknowledged and signed the same on or about September 29, 1866? That is the way your certificate reads?

A. Yes.

Q. At that time, though, when you handed these articles to the Secretary of State, you had not written the certificate of acknowledgement?

A. No, sir.

Q. And you did not then have the signatures of M. M. Melvin, George L. Woods, R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCracken, C. H. Lewis, B. F. Brown, T. H. Cox, or J. Gaston?

A. No.

Q. And you had not taken their acknowledgments?

A. No.

Q. And the acknowledgment of yourself, Thomas H. Cox and B. F. Brown had not been taken?

A. No.

Q. Now, when you delivered this document in that condition to Mr. Samuel E. May, Secretary of State, what did you say to him, and what did he say to you, as you now recollect?

A. Oh, I couldn't recollect that. I suppose I said that 'Here is the articles of incorporation of the Oregon Central Railroad Company. I want you to file them.'

Q. And what did he say, or do you recollect what he said?

A. And that I wanted to use them afterwards, in showing them to the members of the Legislature. He said, 'All right. I will put a pencil filing on it, and you can bring them back, and then I will put a pen and ink filing on it.' He put that on as a memorandum of the date that I presented it to him.

Q. That is, he put a pencil memorandum, as you recollect, on the back of this article or document?

A. Yes.

Q. Of the date when you delivered it to him?

A. Yes.

Q. And then he handed it back to you?

A. Yes.

Q. Now, was the object of it being handed back to you to enable you to go and get further signatures to the articles of incorporation, and complete the acknowledgment?

A. Yes.

Q. You had intended to get other signatures to it after, at the time he handed it back?

A. Yes; well, my main object was to show it to the members of the Legislature, and get these signatures that George L. Woods said he wanted put on.

Q. That would be Thompson and Ainsworth and Reed, of Portland?

A. Yes.

Q. Now, Thompson and Ainsworth and Reed were all known to be capitalists?

A. Yes.

Q. And were the leading capitalists interested in the West Side of the river, where Portland was then and now is situated?

A. Yes.

Q. C. H. Lewis and W. S. Ladd were the two other leading capitalists interested in Portland at that time?

A. Yes.

Q. Now, pursuant to that suggestion of Governor

Woods, you desired to have these articles so that you could get these other signatures?

A. Yes.

Q. Do you recall when George L. Woods was inaugurated as Governor?

A. No, I don't recollect the date.

Q. He was elected Governor at the June election, 1866, wasn't he?

A. Yes.

Q. Then he was Governor as soon as the Legislature met and canvassed the vote in September, 1866?

A. Yes.

Q. Then he was actually Governor at the time he signed these articles?

A. Yes, sir.

Q. Do you recall when H. W. Corbett was elected to the Senate, whether it was at this session of 1866?

A. Well, let me see—no, it wasn't at that session, was it?

Q. Yes.

A. Well, that was about the last day of the session.

Q. Yes, he was elected in September, 1866?

A. Yes, I recollect now, because he was up there fussing around about his candidacy for the Senate, and among other things, we had a reception up at my house, and he was there, and interviewing members of the Legislature.

Q. Now, I call your attention to the names of all these parties who signed the articles of incorporation of the Oregon Central Railroad Company of September, 1866, referred to in your testimony, and which were acknowledged by you,—the acknowledgments taken by you as indicated and concluded by Seth R. Hammer, and will ask you if there is any one living of that list of eighteen excepting yourself and John McCracken?

A. That is the only ones that I know of. I don't think there is any others.

Q. I call your attention to the articles of incorporation of November 17, 1866, referred to in your testimony, and purporting to be signed bv J. S. Smith, I. R. Moores and E. N. Cooke, and will ask you if they are not all dead?

A. They are all dead.

Q. I call your attention to the articles of the Oregon Central Railroad Company of Salem, filed April 22, 1867, signed John H. Moores, Geo. L. Woods, S. Elsworth by Geo. L. Woods, Atty., I. R. Moores, J. S. Smith per I. R. Moores, Atty., E. N. Cooke per I. R. Moores, Atty, Sam'l A. Clarke, and will ask you if they are not all dead?

A. They are all dead.

Q. C. S. Woodworth, Notary Public, appears to have taken the acknowledgment to the articles of incorporation of April 22, 1867. He is dead, too, isn't he?

A. Yes.

Q. Is Seth R. Hammer living?

A. No, Seth is dead.

Q. Is Samuel E. May living?

A. No. May is dead now.

Q. Is J. C. Cartwright living or dead?

A. He is dead.

Q. M. N. Chapman, formerly Deputy Clerk of Marion County—"Mem" Chapman, as you knew him?

A. I don't know whether he is living or dead. He was alive three or four years ago, but I don't know whether he is living or not.

Q. You don't know. He is dead, is he not? I call your attention to an article signed 'Joseph Gaston' which appears in the Quarterly of the Oregon Historical Society, December, 1902, under the subject 'The Oregon Central Railroad,' and found at pages 315 to 326 of this Quarterly, and will ask you if you prepared and wrote and signed that article?

A. I did.

Q. I call your attention to this language, on page 325: 'After losing the land grant the Oregon Central Company sent Mr. Gaston to Washington City in December, 1869, where he was successful in getting from Congress a second grant of land to aid in constructing a railroad from Portland to McMinnville, with a branch from Forest Grove to Astoria; and under which grant the road was constructed to the Yamhill River at St. Joe.' You remember that paragraph, do you?

A. Well, if it is there, I wrote it.

Q. Now, you state there that, after losing the land grant, the Oregon Central Company sent Mr. Gaston to Washington City in December, 1869. Now, it is true, isn't it, Mr. Gaston, that before you started for Washington in December, 1869, the Oregon Central Railroad Company, as you have stated here, thought it had lost the land grant of July 25, 1866?

A. Well, the conclusion was that we were utterly unable to comply with the Act of Congress, and from that we assumed that we had lost the grant.

Q. In other words, because your company (West Side Company) was unable to build its first twenty miles before December 24, 1869, within the time required by the act of June 25, 1868, you and your associates thought the grant was lost?

A. Yes.

Q. Now, isn't this true, Mr. Gaston, that the rea-

son why Mr. Reed, representing the Oregon Central (West Side) went on to Washington to oppose any further legislation, and particularly the act of April 10, 1869, was because your company desired to contest in the courts the rights which each of you claimed to have under the respective designations made by the Oregon Legislature in 1866 and 1868, and that you did not want Congress to pass any act that would allow the East Side Company a chance to compete for the land grant, and give them a chance to build the first twenty miles, or to comply with the previous legislation? Isn't that the reason why your company sent Reed on to oppose any further legislation?

A. Well, now, as I recollect, the conversation between myself and Reed and Ainsworth in their office, when they agreed to that contract, was that if Congress let the grant stand as it was then, and made no alterations or amendments, that they, Reed and Ainsworth and Thompson, would put up the money immediately and build the twenty miles without any reference to any litigation.

Q. In other words, if there was no legislation, the West Side Company was ready, and had promise of financial support, and felt that it could earn the grant of July 25, 1866?

A. Oh, yes, there was no question about that, because those men had the money. They were here in Portla nd They didn't have to go anywheres else to get it.

Q. And that was your position—I mean, the position of the West Side Company, and your associates, notwithstanding the Legislature had attempted to designate the Oregon Central of Salem in October, 1868, as the company entitled to the grant?

A. Yes. They didn't care—Reed and Ainsworth said they didn't care a snap for what the Legislature had done; if Congress didn't interfere, why, they would build the road.

Q. And they didn't then ask for any legislation?

A. No.

Q. In 1869?

A. No, they simply—

Q. Opposed it?

A. Opposed it."

Whereupon the witness further testified:

In the controversy at Washington, Mr. Corbett, who lived on the West side of the river, and whose interests were in Portland proper, at that time there being no East Portland, or city on the East side of the river, and he having been elected Senator in 1866, when the West side company was designated as the beneficiary of the grant, or entitled to have the grant of July 25, 1866, supported that company in all of these efforts to prevent legislation, or to help it to earn the grant. While

Williams, elected in September 1864, and who had been two years in the Senate when Corbett arrived, was occupying a rather neutral position as to the two companies, desiring to please both if he could. In 1868 this controversy between these two companies as to who should build the road, and as to where it should be built, and as to which company should have the benefit of the land grant, had become a political question in the election in June 1868, and witness thinks that it is about true that the counties on the West side of the Willamette River as far south as Eugene, or Lane County, was practically unanimous for the West Side Company, and the East side counties from Multnomah as far south as Eugene were practically unanimous for the East Side Company, and that entered into the election of state senators and representatives to the legislature in 1868 on both sides of the river. He does not know whether it is true that the contest was carried forward along the same lines from Lane County south, through and including Jackson County. He had lived in the Southern part of the state, and most of the men down there supported him in the fight, but he does not know that they took sides simply because the West side counties were on his side.

Refreshing his memory of those early days, witness recollects that Upton was a representative from Multnomah County in the Legislature of 1868, and afterwards became Circuit Judge for that county. Witness remembers that some one offered House Joint Resolution No. 18, to designate the Oregon Central Railroad

Company, that is, the West Side Company, as the company entitled to receive the land and all the benefits of the Act of Congress approved July 25, 1866, on October 6, 1866, but he had it in his mind that Foudray of Jackson County offered the resolution, but if it is recorded that Upton offered the resolution, it is probably true. Witness knows that the special message of Governor Woods, identified by him, was communicated shortly before this legislative action was taken, but he does not think that he asked the Governor to send in his message, but the Governor was very enthusiastic over the matter, because he wanted to have some personal interest in it, and volunteered the proposition. Witness knows that House Joint Resolution No. 13 was referred to a committee, and knows W. W. Upton, E. D. Foudray of Jackson, James Gingles of Benton, Binger Herman of Douglas, and John Whiteaker of Lane; they were in the Legislature in 1866. Whiteaker had taken an active part in the matter, and witness thinks he was favorable to it. Witness knows that the Jackson County members supported the measure very enthusiastically, but he does not recollect as to the Portland members, but knows that Upton did, because Upton was figuring all the way through to get some interest in the proposition. Witness knows that Corbett, W. S. Ladd and Governor Woods and others were called before the House, and Woods and Corbett made very encouraging speeches in favor of House Joint Resolution No. 13. Ladd said he did not know much about it, but was in favor of building railroads and in favor of the general proposition; he

had not considered the matter much.

Witness recalls the bill that was passed and approved October 24, 1866, and referred to in the proceedings as House Bill No. 78 entitled, "A Bill to aid in the construction of the Oregon Central railroad," by which the state undertook to pay interest on a million dollars of bonds, to be issued by the Company, he having drawn the bill himself after the decision of the Supreme Court of California on a similar law. It was repealed at the next session and never executed in any particular. He does not recall that on October 17, 1868 Senator Miller of Jackson County introduced or offered Senate Joint Resolution No. 16, reciting the passage of House Joint Resolution No. 13 and making the recitations which appear in that rescinding resolution, and that he urged its passage; and does not recollect the vote on Senate Joint Resolution No. 16, but knows that it carried through the Senate afterwards. He remembers that S. C. Adams of Yamhill County, T. R. Cornelius of Washington County, Binger Herman of Douglas County, B. F. Holtzclaw of Josephine County, H. C. Huston of Lane County, S. Ison of Baker, C. M. Pershbaker of Douglas, Coos and Curry, and B. F. Burch of Polk County, voted against Senate Joint Resolution No. 16. and that the controversy became geographical, the West Side Senators voting as a unit, assisted by scattering votes from the other sections of the state; Witness thinks there was a lot of them dodged, that is, did not vote at all. The action of the Senate was communicated to the House on October 19th, according to the records, and witness re-

calls that C. B. Bellinger, who had successfully contested the seat of Daniel Carlisle, of Benton, strongly advocated this rescinding resolution, and that the House divided upon the same lines geographically as the Senate, but Bellinger was then running a little store up at Monroe, in Benton County, and for his action in that matter was compelled to leave the county or give up his storekeeping, and he came to East Portland afterwards and Holladay gave him a half block over in Holladay's Addition.

Witness knows that there was some scrap between R. A. Bensel and J. C. Alexander, but that was all he knew. The result was that the Legislature of 1868, after a full and vigorous campaign on the respective merits of the two lines, or the location of the two lines, succeeded in dividing Western Oregon geographically. Some of them voted on geographical division and for the people that they thought they were representing, and some of them voted for the coin that was in it.

Witness wrote the book called "Portland, Its History and Builders," as a matter of history and not as a matter of legal parlance, in drawing legal documents, and when he used the words "Thus securing this act of the legislature in his favor, Holladay continued to push the work of construction on the grade, and sent agents to Washington to get an act through Congress enabling his Salem company to file its acceptance of the land grant act. Congress finally, on April 16, 1869, passed an act extending the time for filing acceptance of the land grant and providing that whichever of the two com-

panies should first complete and put in operation twenty miles of railroad from Portland southward into the Willamette Valley should be entitled to file such acceptance of grant." That was the understanding of the effect of what was done, that was the popular way of expressing it. Wtiness furnished to Mrs. Victor a paper called "Gaston's Railroad Development in Oregon" in manuscript, and from this statement she compiled the statement that is in Volume 2, Bancroft's History of Oregon.

The desire to have a railroad from Oregon to the East took expression in the form of various companies and surveys, various works of exploitation, from as early as the exploitation of Governor I. I. Stevens in 1853. They had a railroad project up in the Provisional Government at one time before that, witness thinks, but Stevens was the first man to call national attention to the matter. The Willamette Valley Railroad Company was a project gotten up, witness thinks, to build a railroad from St. Helens up into the Willamette Valley. He could not vouch for the statement that a charter was granted to a company styling itself the Oregon & California Railroad Company, which proposed to build a road from Eugene City to some point on the East side of the Willamette River below Oregon City, or possibly to the Columbia River, back in April, 1854, but knows there were various schemes proposed about that time, and knows the St. Helens people had a great proposition, proposing to take all the business of the Willamette Valley to St. Helens.

Witness knows that the Governor's special message and this House Joint Resolution No. 13 found on page 251, down to and including the middle of page 260, House Journal, 1866, introduced by Foudray, was referred to a committee of which Foudray was a member, and that he took an active part and made some sort of report back to the House about it, but that is all he knows about it. They submitted therewith House Bill No. 78, a bill to aid in the construction of the Oregon Central railroad, which finally passed and became a law.

Whereupon Counsel for defendants offered and there was admitted in evidence and read into the record from the House Journal of 1866 the following: Mr. Foudray, from the select committee, to whom was referred the special message of the governor, in relation to railroad grant, presented the following report, accompanied by a bill:

REPORT

Mr. Speaker:

The special committee to whom was referred the governor's special message and the house joint resolution No.—, on the subject of railroads, have had the same under consideration, and beg leave to submit the following report, with the accompanying bill, to aid in the construction of the Oregon Central Railroad:

For several years the question of constructing a railroad through the Willamette, Umpqua and Rogue River valleys, has been very generally discussed before the people, some preliminary surveys have been made and much valuable information gathered upon the subject; but before this legislature will adopt any legislation bearing upon the question, it will doubtless be necessary to lay the important and material facts necessary to a proper understanding of the enterprise fully before the house, and to that end your committee has directed its labors.

That a railroad through the above named valleys is badly needed by the farmer and producer, and in fact all classes of our population, must be obvious to the most careless observer, and the bare mention of a few facts is amply sufficient to set it forth in the strongest light.

It is a well known fact that the wheat crop, the great reliance of the Oregon farmer, scarcely ever yields him one-third the price it commands in the San Francisco

market. In 1864 while wheat was selling readily for $2.00 in San Francisco, it would bring the farmer but 75 cents in the Willamette valley, and now when it is above $1.00 in San Francisco, it is dull sale at half that price here. The same inequality of prices will be found to prevail in all other articles of produce. It is absurd to expect our farmers to prosper and aid in developing the country, as long as they are subjected to such disadvantages in competing with the farmers of California. And we cannot expect that other branches of business will prosper when the farmer is thus deprived of the profits of a good market for want of cheap transportation at all times. And as agriculture underlies the prosperity and wealth of the state, it is useless to hope for general prosperity unless we resort to the means which other states and countries employ—cheap and ready transportation to a sure market. In southern Oregon the obstacles to the exportation of agricultural products are so great as to amount to a complete embargo; and such must forever continue to be the condition of that country, at least so far as the most profitable part of the farmer's labor is concerned, until the country is tapped by a railroad leading either to Portland or San Francisco. And as illustrating the necessity of a railroad connection to the people of the southern counties, we may mention the fact, ascertained from the books of the commission merchants at Crescent City, California, that the inhabitants of Josephine and Jackson counties have in a single year paid out as freight money alone, on 1,800 tons of merchandise imported, the sum of $179,-

700. This large expenditure would be reduced fully three-fourths by the construction of a railroad, while it would give the people some opportunity to pay for this merchandise by the exchange of the produce of the farms, while cheap goods and cheap machinery would stimulate the production of the mines immeasurably.

These are some of the burdens that the farmers of Oregon are laboring under for want of railroad transportation. It is growing worse every year, and will continue to do so, for the plain reason that the State of California is fast completing its system of railroads, having now over three hundred miles in actual operation and hundreds more miles projected, by which the resources of every acre of the agricultural land of that State will be afforded the advantages of railroad transportation to tide-water, and thus giving the farmers of that State such an advantage as will enable them to keep Oregon produce out of the markets of the world, until we, as a State, do for our farmers what California, as a State, has done for hers—aid in the construction of a system of railroads.

It is true that we have some steamboat transportation in this State. So had California; but, unfortunately for the State, it was like the steamboat advantages which compelled California to build railroads. It can only be relied on in certain seasons of the year, which being the season of rain and mud compels the farmer to submit to any rate of charges and send his produce to market, it may be, at the very time when prices rule the lowest. The prices for steamboat transportation are generally felt

to be onerous and burdensome, no matter whether they are as low as they might be or not, and the want of a railroad is all the more keenly felt, in order to afford that sure and permanent competition which always results in the prosperity of the country. As further illustrating the advantages of a railroad to the business of the country, we make the following extract from a report on this subject, by the senate committee on corporations to the last legislature:

"The direct pecuniary advantages of a railroad through Oregon may be briefly but more clearly set forth by a little calculation. Statistics carefully prepared by reliable men show that Polk county has this year produced one million bushels of wheat. Suppose that six hundred thousand bushels of this crop could be spared to the San Francisco market. At the prices heretofore prevailing since harvest, this was worth in Polk county about 75 cents per bushels, or $450,000. If there had been a railroad running through Polk county to steamship landing, this wheat would have sold in Polk county, readily, for $1.50 per bushel, or $900,000, making a clear gain of $450,000 to Polk county, on a single crop of wheat, and leaving a margin of 50 cents per bushel to transport the wheat to San Francisco—and all the direct result of railroad transportation. This calculation might be applied to wool, bacon, lard, oats, and especially to the article of hay. Oregon can ship no hay for want of means of transportation, while we have the ability and can produce the best hay in the world, and at a very large profit, if it could be cheaply trans-

ported to Portland.

"Owing to these burdens on Oregon farming, it is a notorious fact that California is now importing grain for feed from the Atlantic states cheaper than she can get it from the granaries of her neighbor Oregon. Some persons are disposed to berate and belittle Oregon farmers for their want of energy in not supplying this San Francisco demand at such handsome figures, and our newspapers take up and echo the cry, 'no energy, no industry,' etc.; and while it is true that Oregon farmers are no better than they ought to be, it is not true that they will be found lacking in energy and industry to supply San Francisco or any other good market, when the means for doing so is afforded them, so they can compete on an equal footing with the farmers of California and the eastern states."

Freight and passengers—rise in land.

One of the most striking and convincing prooofs of the great value of railroad transportation, is to be found in the rapid development of the western states, and especially in the increase of the wheat crop. In 1850, Wisconsin had no railways, and Illinois next to none. The wheat crop of Wisconsin that year was but 4,250,000 bushels; Illinois, 9,500,000; of Pennsylvania, 15,500,000; and Pennsylvania was then the greatest wheat producer of all the states by 2,000,000 bushels. But from 1850 to 1860, Wisconsin and Illinois completed their thorough railroad system, which enabled them cheaply and readily to bring their grain to the markets

of Milwaukee and Chicago; and so, in the year 1860, we find by the census tables, Wisconsin has produced 15,700,000 bushels of wheat; Illinois 23,900,000 bushels, and Pennsylvania but 13,000,000 bushels. During the ten years between 1850 and 1860, there was a falling off in the wheat production of the Atlantic states, while at the same time, almost wholly through the encouragement given to production by railway transportation, the five great wheat states of the west, Indiana, Illinois, Michigan, Wisconsin and Iowa, increased in production 47,000,000 bushels per annum—over three hundred per cent on the products of 1850 was yielded in 1860; and what is most remarkable, the price of wheat was nearly twice as high in the latter as in the former year. In the same states a similar increase is noted in almost every other agricultural production.

As a natural consequence to such results in the production of a country, would be an enormous increase in the value of all real estate and other permanent property. Such is found to be the fact everywhere. The construction of a railroad has always increased the value of the land in any country through which it runs, even in old settled countries, not less than three fold, and often quadrupled the returns on the assessor's list. But this is a fact so well known that it need not be dwelt upon.

THE OREGON CENTRAL RAILROAD

We come now to consider a definite proposition. Through the efforts of a few of our citizens, acting in conjunction with some railroad capitalists of California, and aided by the Pacific coast delegation in congress, a grant of twenty sections of public land per mile has been secured from Congress to aid in constructing a line of railroad from Portland, Oregon, to the Central Pacific Railroad in California. It is made the duty of this legislature to designate the company which shall receive and manage so much of this land grant as lies within the state of Oregon. In view of these facts the following named gentlemen have incorporated themselves under the general incorporation law of this state, to wit: J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, Edward R. Geary, S. Ellsworth and H. W. Corbett, under the name and style of "the Oregon Central Railroad Company," for the purpose of receiving the said grant of land, and using it so far as it may go, towards the construction of the proposed railroad, passing through the Willamette, Umpqua and Rogue River valleys. Under present circumstances, the land is not available for the purpose of raising money, one of the grant conditions being that twenty miles of railroad must be finished and put in operation before the government patent will issue for the land. It would be unreasonable on our part to expect the federal government to construct our works of internal improvement, without the least effort upon our part. We are also able

to state that this corporation, composed of our own citizens, have received an offer from capitalists able to command the means to construct the road, that if the State of Oregon would render certain aid to the enterprise, all the funds needed would be forthcoming. We are of opinion that it is better for the state to aid the matter, in its collective capacity, than to rely on the uncertain aid of private individuals. The reasons for this are many and obvious. It is emphatically a work for the benefit of the whole state, and every man, woman and child in it. It will benefit all in proportion to their property, and it is but simple justice that the property thus benefited should contribute its ratable proportion to secure a work of common benefit. We must offer some inducement for foreign capital to become associated in our interests.

It cannot be expected that the money of our Oregon capitalists, readily yielding here twelve per cent. per annum, will desire or be willing to go into a great enterprise with capital which is satisfied with six and seven per cent. per annum. For this reason we cannot rely on individual aid alone in the matter. The great profits and benefits of a railroad comes back to the people in that indirect way of increasing the value of their land, and raising the prices of their crops, rather than in dividends on subscriptions. Other states aid their railroads. In fact, it is the shape in which almost all the local aid is furnished. New York has been made the Empire State by a liberal policy toward its internal improvements, giving upwards of $20,000,000 to canals alone. Virginia

has given six millions to railroads. Ohio gave many millions to the construction of its canals and railroads. The young state of Minnesota has contracted to loan its bonds to the railroads of that state, to the amount of $24,950,000. Missouri has already given $17,656,000 in state bonds to the railroads of that state, which liberal policy would have ere this made her the Empire State of the west, but for the losses by the rebellion. California has contracted to pay the interest on $1,500,000 of the bonds of the Ceneral Pacific Railroad Company. And so it is in every state that would keep up with the prosperity of the age.

It is proposed by the Oregon Central Railroad Company, that if the legislature will levy and appropriate, whenever a section of twenty miles of railroad is finished and put in operation, a sum of money sufficient to pay the interest on $500,000 of the company's bonds; and whenever one hundred miles is finished and put in operation, the additional sum sufficient to pay the interest on another $500,000 of the company's bonds, and so pay this interest for twenty years, and also loan the company the sum of $10,000 for preliminary contingent expenses, the whole amount to be secured by a mortgage of all the company's property to the State, and to be returned at the expiration of the twenty years, then this company agrees to proceed at once to the work of constructing the road. After fully considering the matter, your committee are decidedly in favor of the proposition and have reported the accompanying bill to carry the same into effect.

Experience has shown in other states that such assumption of liability has not increased the rate of taxation on the property of tax-payers, and that the consequent increase of revenue growing out of the increase in the value of taxable property has more than compensated the interest assumed, and the states as well as the tax-payers have been less burthened, besides becoming holders of good mortgage security for all the money advanced. In Santa Clara county, California, where the county had subscribed $100,000 in bonds, the interest on which amounted to $7,000 per annum, stating that the rate of taxes had not been increased. The town of Evansville, Indiana, subscribed $200,000 in bonds to the Evansville and Crawfordsville Railroad, and it was not necessary to increase the rate of taxes in order to pay the annual interest. H. C. Wait, register of the United States Land Office at St. Cloud, Minnesota, states that the taxes have not been increased by reason of the aid furnished railroads by that state. The secretary of the state of Wisconsin reports that a large amount of the counties and towns of that state aided in their corporate capacity in the construction of railroads in that state, but that in no instance was it necessary to increase the rate of taxation in order to pay the annual interest on the bonds. In 1852 the state of Illinois issued its bonds to the amount of $12,000,000, taking therefor stock in the railways projected in that state, and although the annual interest on this vast amount of indebtedness amounted to $840,000 annually, yet such was the rapid increase of property on the tax roll, that it was not nec-

essary to increase the rate of taxation to pay it. The revenue from taxes on the increased value of property occasioned by these railroads, has already enabled the state to pay off more than $4,000,000 of the principal debt, and it is now believed that the remainder will be extinguished by the year 1876, without even increasing the rate of taxation from the time the $12,000,000 bonds were first issued until they are finally paid and cancelled. This is a great historical fact in the growth of this country, and assures us of our duty in going forward to do something for the State of Oregon.

If Oregon gives the aid to this railroad proposed by this bill, it will be necessary to pay $70,000 per annum as soon as one hundred miles of road is finished. Then how will the taxes stand? One hundred miles of railroad will add to the tax list, first, its own cost—not less than $4,000,000; secondly, not less than fifteen million dollars on the increase of value of land and all other property; aggregating an addition of nineteen million dollars to the assessable property of the state. At five and a half mills on the dollar, the present rate for state taxes, this railroad addition to the tax roll would produce $104,000 annually—$34,000 more than is asked for by the proposition submitted; so the argument is in favor of granting the aid asked for to build the railroad.

Your committee recommend the passage of the accompanying bill.

H. B. No. 78—"a bill to aid in the construction of the Oregon Central Railroad."

Whereupon the witness further testified that S. F. Chadwick, J. H. Mitchell, W. S. Ladd and Simeon G. Reed are dead. The old West Side Company did not lay any track prior to December 24, 1869. It made a temporary grade all the way to Hillsboro by December 26, 1869, and had built the bridges referred to and had built some bridges in Washington County further out, but had laid no rails. The Company obtained an ordinance for the location of its line on Fourth Street earlier than December 26, 1869. The measure had been pending for some time before the council, but he does not know exactly when it was passed. The bond issue of the City of Portland was for $250,000, and was afterwards enjoined in a suit brought by H. C. Coulson against the City of Portland and set aside as illegal. The counties of Washington, Multnomah and Yamhill turned over the money that they had collected; they made an assessment to pay the interest on the $50,000 and collected that money in and gave it to the West Side Company, but afterwards this was enjoined by the courts. A petition was circulated over Washington County asking the County Court to guarantee the interest on $50,000 of the bonds, and the County Court made an order to that effect. That was afterwards set aside, but Yamhill County made no order.

Witness has seen the articles reported in the Oregonion April 16, 1868, giving an account of the exercises which took place at the breaking of ground on the West Side April 15, 1868, and he made an address on that

occasion, and he supposes he must have subscribed it "J. Gaston, President of the Oregon Central Railroad Company," or else it would not have been in the paper that way.

"Q. I understood you to say that the Oregon Central Railroad Company (West Side) did not have one-half of its capital stock subscribed prior to the Stockholders' meeting of May 24, 1867, when the minutes of the Stockholders' meeting, as shown by Journal No. 1 introduced in evidence, were recorded in this book, at which B. F. Brown was President, George W. Lawson was Secretary, and it is recorded here as the first Stockholders' meeting. Had there been no Stockholders' meeting of the Oregon Central (West Side) before that time?

A. Isn't that a meeting of the incorporators?

Q. It reads this way: 'Stockholders' Meeting. Salem, Oregon, May 24, 1867. At a meeting this day held at the office of the company B. F. Brown was duly made president and G. W. Lawson secretary of the first stockholders' meeting. Whereupon came Seth R. Hammer holding the proxy of Thomas H. Cox, incorporator, G. W. Lawson holding the proxy of M. M. Melvin, incorporator, Cyrus A. Reed holding the proxy of Joel Palmer, incorporator, and B. F. Brown and J. Gaston, incorporators, in person, and also the present stockholders of said company, and upon a ballot being taken for the election of a board of directors, the following named persons were duly elected directors of the Oregon

Central Railroad Company, to-wit: William T. Newby, J. M. Belcher, B. F. McCleuch, W. C. Whitson and J. Gaston. The incorporators appointed Saturday, the 25th day of May inst. as the time and the town of Amity, in Yamhill County, as the place for the first meeting of said Board of Directors. Whereupon the meeting adjourned. B. F. Brown, President.'

A. Now, I had forgotten that meeting. I thought it was held at Amity, but that was a meeting of the directors that was held at Amity.

Q. This was at Salem. This was the first meeting, then, of the corporation?

A. Yes.

Q. Had you not had a meeting of the stockholders before that?

A. That was a meeting of the stockholders as well as of the incorporators.

Q. Yes, I know; but at that time, isn't it true, Mr. Gaston, that more than half of the capital stock of this company had been subscribed, so that you were legally organized?

A. Yes. In order to make a legal incorporation, I had subscribed one-half of the stock, and others had subscribed a little—a share or so.

Q. When was that subscription made by you of

one-half of the capital stock?

A. It must have been about that time—a day or two before, or on that day—I couldn't say.

Q. Well, the articles were filed with the Secretary of State, or by Samuel E. May, Secretary of State, were actually formally filed, and indorsed as filed, on November 21, 1866, and you claim they were actually tendered for filing, and received by him for filing, on October 6, 1866, in their uncompleted condition?

A. Yes.

Q. Now, when were the stock books opened for the subscriptions to the stock? About when, do you remember?

A. Well, it was about the time of that meeting there that you just read.

Q. Not until about May 24, 1867?

A. Well, that must have been about the time.

Q. Then, at the time that you were designated by the Legislature the stock had not been subscribed?

A. No, no stock had been subscribed.

Q. There had been no election of directors?

A. No.

Q. There had been nothing done excepting to execute in part the articles of incorporation?

A. Yes.

Q. Had you at that time filed the triplicate in the County Clerk's office, of Multnomah County?

A. Yes.

Q. You did that when?

A. I did that a day of two before I presented them to May.

Q. That is, before the 6th of October?

A. Yes.

Q. Well, now, did you leave them with the County Clerk in their then signed condition?

A. In Multnomah County?

Q. Yes.

A. I can't say now whether I did, or whether I brought them back that copy to Salem or not. I couldn't say positively about that.

Q. Well, now, if you left them with the clerk here of Multnomah County in October, but prior to October 6, 1866, then the articles that you left here were only signed by the first four or five people?

A. Yes. I must have taken them back and carried the three copies around, because they are all signed, I think, the whole three copies are all signed by those folks.

Q. Then if you tendered it for filing here, you did it the same as you did with May:

A. Yes.

Q. And withdrew it to get more subscribers?

A. Yes.

Q. And did you afterwards leave with the Secretary of the Oregon Central Railroad Company a completed copy?

A. Yes.

Q. As certified and acknowledged by you, and Mr. Hammer as the Notary Public?

A. Yes, sir.

Q. And that, of course, was not done until on or about November 21, 1866?

A. Yes.

Mr. Townsend: It could not be done until after May, 1867. There wasn't any secretary, you know, don't you? There wasn't any secretary until May 24th.

Q. With whom, now, did you leave this third copy?

A. I kept it myself.

Q. What capacity did you have?

A. Well, I was appointed, you know, by the incorporators to solicit stock, and had in that way the

charge of the papers.

Q. You had custody of the corporate records, as far as anybody had custody of them?

A. Yes.

Q. Until the stockholders met with the incorporators on May 24, 1867?

A. Yes, the incorporators executed a paper authorizing me, as secretary of the incorporators, to solicit subscriptions of stock.

Mr. Townsend: Just a moment Mr. Gaston. The statute provided that the incorporators, or a majority, should designate one of their number to receive subscriptions to capital stock?

A. Well, that is what they did.

Mr. Townsend: Yes, and it was under that authority you were designated?

A. Yes, and under that authority I had kept the office copy of the incorporation papers.

Q. But, as a matter of fact, the corporate stock books, or the subscription of the stock, was not actually made until a few days before the meeting of May 24, 1867?

A. No.

Q. That is to say, the physical subscription of your

name for one-half of the capital stock was not made until a day or two before May 24, 1867?

A. Yes, I think that is the fact.

Q. And do you recall whether that subscription was made on a stock book, or what it was made on?

A. Oh, I think we had a little stock book, but I don't know what became of it, or how that was managed. We must have had a little stock book.

Witness further testified that J. M. Belcher was a director and elected Vice-President of the West Side Company, and was a merchant at Lafayette. Belcher had a farm out near Wheatland in Yamhill County, at the time this was going on. Mr. McClench had a farm near Wheatland; lived just over the county line, above Wheatland. Belcher is dead. W. C. Whitson and Judge Williams are dead, and he thinks F. A. Chenoweth is dead. M. M. Melvin, J. C. Ainsworth, C. H. Lewis, B. F. Brown, Geo. L. Woods, Joel Palmer, R. R. Thompson, T. H. Cox, C. N. Terry, W. T. Newby, B. F. McClench, S. Ellsworth, W. W. Upton, E. D. Shattuck, Matthew P. Deady, C. B. Bellinger, W. S. Caldwell, J. A. Chapman, former mayor of Portland, Ira Jackson, County Judge of Washington County, Thomas B. Humphreys, County Clerk of Washington County, E. W. Haines, Secretary of the West Side Company, George H. Andrews, T. R. Cornelius, S. C. Adams, James B. Newby, son of William T. Newby, S. G. Elliott, Ben Holladay, J. N. Dolph, George Weid-

ler, R. W. Towler, H. B. Tucker, George W. Eberts, S. Coffin, C. M. Carter, J. B. Underwood, Levi Estes, S. M. Smith, C. S. Silby, Judge Olney of Clatsop, W. R. Halsey, all are dead. All of the men, as far as he knows, that were in any wise connected with the Oregon Central Railroad Company (West Side), excepting himself and John McCraken, one of the incorporators, are dead.

Whereupon the witness, upon redirect examination, further testified that after he sold out his interest in the West Side Company to Holladay, as he has described, and after he entered the employ of the West Side Company under Holladay, he became acquainted, to a certain extent, with the plans of Holladay as to handling the land grants. He became so acquainted by conversations with him, just casual conversations, not specially you know.

Q. What were those general plans, so far as you became acquainted with them?

Mr. Fenton: Objected to as hearsay, and as not binding on the Oregon Central Railroad Company of Portland, or the Oregon Central Railroad Company of Salem, or on the defendants or either of them, and as not showing any authority on the part of Mr. Holladay to make any declarations or statements on this subject.

A. He had organized a corporation, with main office in San Francisco in charge of Mr. Wilson, who had formerly been Commissioner of the General Land Office

in the United States Government, and who had charge of the whole business of disposing of the lands. Mr. Wilson had prepared maps and pamphlets, and sent them broadcast over the United States and European countries, advertising the lands for sale; and they had appointed a local land agent here in Oregon, and made Mr. I. R. Moores, who had formerly been connected with the East Side Oregon Central Railroad Company—put him in charge of that office in Portland; and advertised the lands in Oregon. And men would come in there and file applications to purchase the lands on time. I filed applications to buy a quarter section in Wapato Lake, in Washington County; and oh, there were a great many men came in; and the terms were very liberal to people who wanted to buy the lands—a small payment down and interest on the balance, and small payments running for eight or ten years.

Q. Well, now, was the corporation that you refer to The European and Oregon Land Company?

A. I think that was the name of it.

Q. You say that he placed Mr. Joseph F. Wilson—was it?

A. Joseph S. or Joseph F. I couldn't say what the middle name was. I was acquainted with Mr. Wilson. I met him in Washington City.

Q. Joseph S. Yes, you are right—Joseph S. Wilson. He had formerly been Commissioner of the General Land Office at Washington, D. C.

A. Yes, sir.

Q. Now, when was he Commissioner of the General Land Office?

A. Well, he was Commissioner of the General Land Office when I was in Washington City in the winter of 1869-70.

Q. Did you know anything about any correspondence between Mr. Holladay and Mr. Wilson on the one hand, and Senator Williams, who had become Attorney General of the United States, on the other hand, with reference to a legal construction of the provision of the grant prohibiting sales except to actual settlers, in limited quantities, and for a limited price?

A. No, sir, I did not know anything about it.

Q. Or did you know anything about any correspondence between Mr. Holladay and Mr. Wilson, on the one hand, and the Department of the Interior on the other hand, upon that subject?

A. No, sir.

Q. Did you see Mr. Wilson's writing so as to become acquainted with it?

A. Well, I think I had correspondence with Mr. Wilson myself. I have seen his signature.

Whereupon, the witness, being shown Government's Exhibit 109, idetnified the copies of the letters purport-

ing to have been signed by Wilson therein, and identified the signature of Wilson, as being his signature.

Whereupon, Counsel for complainant offered in evidence Government's Exhibit 109, Government's Exhibit 109-A, Government's Exhibit 109-B, Government's Exhibit 109-C and Government's Exhibit 109-D, duly certified, as prepared by and under the direction of James F. Casey, employee in the Railroad Division of the General Land Office at Washington, D. C., to each and all of which exhibits Counsel for defendants objected that the same were immaterial, irrelevant, and as not controlling the legal effect of the acts of Congress; which said several Government's Exhibits 109, 109-A, 109-B, 109-C and 109-D are hereinafter set out and described, and made a part of this statement of the evidence and so identified herein.

Whereupon the witness further testified on re-direct examination, that he thought he had made himself clear, that the vote on the proposition of this railroad grant before the Legislature of Oregon in 1868 was made on geographical lines, except where members of the Legislature were influenced by other and improper considerations. It was the understanding of witness then and is yet that the division in the vote for and against the proposition referred to was upon geographical grounds except where the members had changed their minds and voted for a consideration personal to themselves without reference to the justice of the contentions of the two companies or the interests of their constituents.

STIPULATION

Whereupon it was stipulated between the parties by their respective counsel that the record from the Sennate and House Journals of the State of Oregon for the year 1868 shows the residence by counties of the members of the Senate and the members of the House who voted in favor of Senate Joint Resolution No. 16, which subsequently became the resolution of October 20, 1868, and that the Senate Journal for the year 1868, at page 253, shows that there were fourteen votes cast in favor of the Resolution and eight in opopsition thereto and that the fourteen Senators voting in favor of the Resolution were from and represented the fourteen counties, as follows:

Name of Senator	County
Bayley	Benton
Brown	Marion
Cochran	Lane
Crawford	Linn
Cyrus	Linn
Dribblesbis	Grant
Ford	Umatilla
Hendershott	Union
Miller	Marion
Miller	Jackson
Powell	Multnomah
Stout	Multnomah
Thompson	Clackamas
Trevitt	Wasco

It is further stipulated that the House Journal shows at page 366 that twenty-eight votes were cast in favor of the Resolution and eighteen in opposition thereto and that the names of the twenty-eight who voted in favor of the Resolution, together with the counties which they represented, respectively, are as follows:

Name of Representative	County
Alexander	Linn
Alexander	Benton
Bellinger	Benton
Beers	Baker
Bryant	Linn
Butler	Wasco
Cox	Josephine
Crooks	Linn
Davenport	Marion
Denny	Marion
Gerrett	Clackamas
Gray	Grant
Gilfrey	Lane
Johnson	Linn
Kirk	Umatilla
Louden	Jackson
Litchenthaler	Marion
Minto	Marion
Powell	Multnomah
Rinehart	Union
Smith	Jackson
Stites	Linn

Name of Representative	County
Simpson	Marion
Trullinger	Clackamas
Tandy	Lane
Winston	Clatsop
White	Jackson
Whiteaker	Lane

Whereupon upon re-cross examination the witness further testified that he had no personal knowledge of the formation of the partnership agreement of Ben Holladay with C. Temple Emmett and S. G. Elliott, alleged to have occurred on September 12, 1868; he only knew the general statement that they were partners. Holladay came to Oregon first in connection with the railroad enterprises in the latter part of June or the 1st of July, 1868. Witness does not know whether Holladay was interested or not in the promotion of surveys of California parties earlier than that. That was his earliest knowledge of Holladay being in Oregon. He met William Norris connected with these railroads only once. Norris was a great friend of Holladay and was in some way an intermediary in the steamship companies with Latham. He did not know that the European & Oregon Land Company was incorporated as a California corporation December 21, 1870. He only knew in a general way that it was a California corporation, but did not know when it was incorporated. Witness knew that Joseph S. Wilson was president of that company and he saw the offices at 3320 California Street, San

Francisco, California. Witness does not think that Wilson was ever in Oregon in connection with this business. I. R. Moores was the land agent of the company at Portland during this short time that the European and Oregon Land Company undertook to dispose of this grant, but he does not think it ran a great while. They did not succeed in selling the land; it was a very expensive proposition and Holladay said to witness that he would have to get rid of it, or something like that. They caused the advertisement of the sale of this land to be circulated on the Continent of Europe in various languages and spent considerable sums of money to invite settlement of these lands as early as 1871 and 1872 as witness understood from the statements and the literature that he saw. He saw a great deal of that literature and knew that a great deal of it was in languages he could not read and that they were extensively circulated for the purpose of inviting settlement of these lands; witness saw several pamphlets at Holladay's rooms; of course he could not read them, but Holladay said they were being circulated. Witness thinks that Norris was concerned in that matter, he was a sort of confidential friend of Holladay's. He could not say that he knew any of the officers of the European and Oregon Land Company, except Wilson. He was personally acquainted with Wilson before Wilson came to California. Witness knew that William C. Ralston and Francis Avery were interested with Holladay in these schemes, but he could not say that they were officers of the European and Oregon Land Company. He re-

members that Ralston was cashier of the Bank of California and knew him personally; he knew that William Norris was connected with the Northern Pacific Transportation Company, but could not say in what capacity, and that Faxon D. Atherton of San Francisco was one of the trustees of this company, and that Milton S. Latham was manager of the London and San Francisco Bank and also one of the trustees of this company; he knew Latham in Ohio before Latham came out here. Witness did not know Ed. H. Green and does not recollect that he was one of the board of trustees of the European and Oregon Land Company.

Whereupon *S. S. Marr,* called as a witness on behalf of the United States being first duly sworn, testified upon direct examination; that he is now what is called law examiner in the General Land Office and has been working continuously in the Railroad Division of the General Land Office since May 1, 1877. The Railroad Division was created about June, 1872. Before that, it had been what was called "F Section of Division C" of the Public Lands Division. He was formerly Chief of the Railroad Division from 1897 or 1898 until sometime in 1908 and was chief at the time this suit was instituted.

Witness prepared at the request of counsel for complainant, or caused to be prepared in his Division a statement showing the date of the lists or selections, the number of selections, the Act of Congress under which they were made, the area as finally clear listed, and pat-

ented, the date of approval by the Secretary, number and date of patent, of all lists and selections and patents pertaining to the grant in Oregon under the Act approved July 25, 1866 and the grant under the Act approved May 4, 1870.

Whereupon the witness identified this statement as Government's Exhibit 110 as such statement prepared by him and under his direction and from his belief it is correct; it was prepared for that purpose and was compared and the statement is correct as far as it could be made. It was prepared under such circumstances that as an official he could certify as to its accuracy; he was Chief of that Division at the time it was prepared from the records of his Division, under his immediate supervision and he felt responsible for the accuracy of it.

Whereupon counsel for complainant offered in evidence Government's Exhibit 110, to which counsel for defendants objected as immaterial, irrelevant and incompetent, and renewed the objection to the jurisdiction as made at the opening of the case and it was stipulated that these objections may be understood as going to all the testimony of the witness. Whereupon it was stipulated between the parties that Government's Exhibit 110 may be read into the record and the original exhibit withdrawn, which said Government's Exhibit 110 is hereinafter set out and described and made a part of this statement of the evidence and identified herein as Government's Exhibit 110. Whereupon witness further testified that Government's Exhibit 110 was pre-

pared before the year 1909, during his service in the Railroad Division of the General Land Office, his work pertaining to the administration of these railroad land grants, including the proceedings with reference to lists and selections and the issuance of patents. He would not like to say now that he approved any of the lists with reference to any of the lands involved in the present suit; he does not remember whether any patents were issued to the company during his time, but the record will show if any were issued during his time, that he approved those lists as Chief of the Division, approved the certificate of the clerks of his Division that was attached to them, that the lands are clear, of the character prescribed in the grant, and passed under it. Such a certificate as that is attached to every list, and if any such patents were issued during his time as Chief of the Division he approved that certificate. Whereupon, upon cross-examination, the witness further testified, that he was clerk in the Railroad Division from May 1, 1877, up to the time he became chief; his duties were from May 1, 1877, up to the time he became chief, adjusting conflicting claims between the railroad companies and settlers or others within the limits of the railroad grant; when any tract of land became in conflict or was claimed by somebody other than the railroad company, within the limits of this railroad grant, that came up to his Division for adjustment; that Division determined and decided the matter, and witness did that; that was his particular duty during that time. He examined some of the grants, perhaps some of the lists to see wheth-

er they were clear or not, but the particular duty was settling that contest between the settler or other claimant and the railroad claimant. When he became Chief of the Railroad Division his duties were to administer the Division; review all the letters that were written, see whether they were correct or not and in accordance with the law. He had about 20 clerks under him as chief of the Division, and the Commissioner who would sign the letters, was his superior officer. After a letter was prepared, that is a decision rendered deciding this conflict that occurred, it would go to what is called the law clerks—an examining board of lawyers; they would pass upon this question, and issue it, sign it, approve of it, and then it would go to the Commissioner for signature, who would sign it, return it to the Division and the Division would copy and mail it. Any of the clerks of the Division that had any occasion to go to the files would have access to the files relating to these two grants. In the adjustment of a claim, a conflict between the railroad and settler, or others, it was the duty of all the clerks who had that to examine to examine all these files; not only that but to examine the plat books and all the other records of the office and often times the field notes. In explanation of the manner in which the correspondence relating to these grants is kept the witness says: "When a letter would come to the office that had reference to any particular railroad grant, we have a file that belongs to that particular railroad—a box that we put that letter in. If it is something that we don't think would affect the grant in any way, why, it goes

as a miscellaneous letter; but if it is a letter that we th
would have any effect upon this grant, we would
it in what we would call the Oregon and California
—have a file for that purpose. Now, when that lette
answered, or any decision is rendered in the matter, w
that is press-copied—used to be—in a book for t
purpose, just an ordinary press-copy book. And t
had no particular press-copy book; they all went i
the same book. All the letters addressed to regist
and receivers went into one book, and all the letters
dressed to individuals, miscellaneous letters, went i
another." Witness further testified that letters
dressed to the Secretary of the Interior would go i
the miscellaneous press-copy book, as a rule. Fo
time they had a Secretary's record, but for a good ma
years back now it has gone into the miscellaneous bo
Different persons would pass upon the railroad select
lists in the Railroad Division and in other Divisions.
used to be the practice to have two clerks examine t
list in his Division and append their certificates to
and sign it; then at times there were other clerks-
went to what is called the Swamp Division; a clerk th
would examine it and append his certificate; it w
to the Mineral Division, and clerks of the Mineral
vision would append their certificate. Each one of th
certificates, being approved by the chief of the respect
Divisions. It is now the practice upon its return fr
the Department clear-listed and approved by the Sec
tary to go to the Recording Division to be written up
a patent. At the time that most of these patents w

issued, they were written in the Railroad Division. No one clerk had full charge of examining the lists and writing the patent, but it was the practice, really, to give the lists to the clerks who had charge of the particular state that the land was located in, because he was more familiar with that than anybody else, and more likely to get it right, but no one man had everything to do with one particular list. Whereupon the witness upon redirect examination, further testified that the course one of these lists and selections of lands by land grant railroad companies took, in detail, from the time it was first filed in the local land office and transmitted to the general land office was that the list was taken up and examined by the Railroad Division of the office, for the purpose of determining whether it was of the character of lands prescribed in the grant and subject to patent to the company. The examination of the Railroad Division was of tract-books and the plats and field notes, to determine that there was no conflicting claim. After the examination was made the list was referred to the Mineral Division of the General Land Office for examination by that Division to determine whether it was free from any mineral claim. After that it was referred to the Swamp Division to determine that it was free from any swamp claim. The Mineral Division and the Swamp Division appended their certificates to the list, but only as to whether the land was mineral or swamp land. The Railroad Division did all the rest of the examination. The Railroad Division determined that the land was within the proper limits described in the list. Some-

times it was an indemnity selection, an indemnity list; sometimes it was a primary list. If it was a primary list the office determined that the land was within the primary limits of the grant; and if it was an indemnity list, the office determined that it was within the indemnity limits of the grant, in the first place. They had on file maps which defined the primary and indemnity limits of each grant, so that by reference to the records he could tell whether the lands claimed by the railroad company were within the limits of the grant to that company. That was one thing that the Railroad Division determined. The other Divisions didn't pay any attention to that part of it. Their certificates were as to whether the land was mineral in the Mineral Division, and whether it was swamp in the Swamp Division. There were some claims in the Mineral Division that did not show upon the tract books. That was the reason of referring to the Mineral Division. The Swamp Division kept a set of tract books of its own, and that was the reason of sending it to the Swamp Division, for fear that there might have been some neglect or error in posting it. But the work of determining that the land was free from all claims was the work of the Railroad Division, and that Division first determined whether it was within the limits of the grant at all. After witness came into the office it was determined by the office whether the railroad had been constructed opposite the lands claimed, and whether the lands had been earned. Prior to that time this had not been done. It frequently happened that there was land, particularly under the old state grants, which the

office certified without knowing whether the road was constructed at all, and that happened so in the other grants, too, sometimes; witness thinks that this was avoided when he came in the office in 1877. The office then determined that the road was constructed opposite the land and it ought always to have been done so. The office determined whether there were conflicting homestead, pre-emption or other claims of record; that is any claim under the public land laws of the United States, or any other laws of the United States, or any private claim, or anything else that conflicted with that grant. In the examination of those grants, if they found there was a claim existing to that land, either at the date of the grant or at the date of the definite location of the road, then they would cut that tract out of the list. That would defeat the grant, even though the land might have been free at the time of the selection or listing by the company. If it was covered by some claim at the date of the grant or at the date of the definite location, it ought not to pass under the grant. These are what the office calls present grants, and when the line of the road is definitely located, then the grant attaches in the primary limits; and whatever is free and clear and of the character of lands intended to be granted, passed at the time of the definite location of the road, or did not pass at all. In the indemnity limits, the right accrued on selection, and it did not make any difference what the previous condition of the land might have been if it was clear at the time of the selection; but in the primary location, that land must have been free at the date of the

grant and at the date of the definite location. Witness does not think that outside of these several things mentioned by him that the Railroad Division determined anything else. When these things were all determined in favor of the Railroad Company, the list was submitted to the Secretary, with recommendations that it be approved. The land was all clear-listed before it went to these other Divisions. If the other Divisions found anything the matter with the list they would have to write that list over again, or partly, whatever it was to make it clear. After all the examinations had been made the list was then submitted to the Secretary for his approval, and if there was anything discovered that was wrong with it up to the date of approval, they would correct it if necessary. They got the clear list after examining the records of each Division, excepting the Mineral Division and the Swamp Division. Many times they would have that examination made by the Mineral Division and Swamp Division before the Railroad Division made the fair clear-list, then it would have to be gone over again afterwards before the other Divisions put their certificates on. The certificate of the Mineral Division would show that there was no mineral claim there, or if there had been a mineral claim that the mineral claim had been adjusted, and rejected, and wiped off the record. And it would be the same with the Swamp Land Division. Then it was for the Railroad Division to determine if there had been any previous claim that had been wiped off the record, whether that claim was sufficient to have defeated the grant, that

is to bring the lands within one of the exceptions to the grant.

"Q. Now, since you have been identified with the Railroad Division in 1877, has the Railroad Division ever, in recommending a list or selection for patent, considered or determined whether any of the conditions subsequent annexed to the grant have been violated?

Mr. Fenton: Objected to as immaterial and incompetent.

A. No.

Q. Well, why haven't you done that?

Mr. Fenton: Same objection.

A. Why, the reason, perhaps, why we haven't done this was that this land passed under the grant. We had determined that, that it passed under the grant.

Q. That matter was determined by the Department of the Interior's own act?

A. Yes.

Q. And the rule as to what it would do?

A. Yes.

Q. I want to know what the practice has been, and when it arose, and whether it has been followed, and for how long, of passing upon the breach of conditions subsequent annexed to the grant or not passing upon them. I want to know which is the fact.

A. We did not. We never passed upon the question as to the breach of the conditions subsequent. The way I understand this thing is this, now, that that was something that the company was required to do after it got its patent. It had no right, legally, to do these things until it got its patent. For instance, the sale of the land, if it did, it might have sold something that it had no right to at all. But after the company got its patent, then the condition subsequent required it to do something. Now, that was a matter that we didn't pay any attention to.

Mr. Fenton: I move to strike out the answer of the witness as an opinion on a legal question, and as incompetent.

Q. I will ask you, Mr. Marr, whether, since the decision of the Supreme Court in Schulenberg v. Harriman, speaking generally now, the Department of the Interior, and particularly the Railroad Division of the General Land Office, either considered or determined whether there had been any breaches of any conditions subsquent annexed to the grant, in passing upon lists and selections of land and approving them for patent?

Mr. Fenton: Objected to as incompetent and immaterial.

A. Well, I will say this, that only for a short period along in the early '80's—I cannot remember the time exactly—when there was a question as to looking to the forfeiture of these grants, we were directed then not to issue patents under railroad grants where the road had

been constructed after the time prescribed in the law when it should be constructed. That was afterwards set aside, or anyhow we were directed to go on and issue these patents, for the reason that we had no right to do anything else. After the road was constructed, that was.

Q. I understand. Well, at the time in the early 80's that you were instructed not to issue patents for lands to railroad companies who constructed the railroad after the time prescribed, do you not recall that there were many acts pending in Congress for the forfeiture of those grants, some general acts as to all grants, and a great many acts relating to pacific grants, and that the order of the secretary in most instances referred to the fact that legislation was pending, and no patent should be issued until Congress had acted?

A. Yes.

Q. You find that set forth in Donaldson's Public Domain?

A. Yes. Yes, that was the reason for it—there was legislation pending. In fact, the Act of March 3, 1887, was under consideration some time before it was passed.

Q. And the General Forfeiture Act of September 29, 1890, was under consideration for some time?

A. Yes.

Q. Thirteen or fourteen years, was it not?

A. I don't remember how long, but it was some time; a good while, anyhow."

Whereupon, upon recross examination, the witness further testified, that since he had been connected with the Railroad Division, he had always ascertained, or attempted to ascertain, whether the roads claiming lands under these land grants had constructed their roads opposite to and coterminous with the lands applied for, and he thinks that this rule has not been departed from since he has been with the Railroad Division. For a time he was instructed not to approve for patents lists applied for where the roads were not constructed within the time, although at the time of the application for patent the road had been constructed past or opposite to and coterminous with the lands; and that was particularly from the time these acts introduced in Congress were fiirst introduced up to September 29, 1890, when the General Forfeiture Act was passed, that, that practice prevailed. The Act of September 20, 1890, was a General Forfeiture Act, and attempted to forfeit, and did forfeit, for failure to construct opposite to and coterminous with the road not then constructed. It did not forfeit anything opposite constructed road. All constructed road, whether constructed in time or not, was considered as if it had been constructed within the time under that act, and was so construed in the Railroad Division. These lists were posted on the tract-books as soon as they could get them there, but at the time witness first came into the office, those lists would come to the Railroad Division first, and they would send them up to be posted on the tract-books before the Railroad Division took action. That was the first thing the Railroad Division did.

Whereupon J. F. CASEY called as a witness on behalf of the United States, being first duly sworn testified; that he is at present employed in Division F of the General Land Office, which has several Divisions designated by letters. Division F is the designation of the Railroad Division. He has been employed in the Railroad Division for about a year (March 4, 1912), but was there before, about fourteen years before for about four years and in the meantime has been employed all the time in some other Division of the General Land Office. He first came in to the General Land Office in 1889. Was out then for a short time and returned in 1893 and has been continuously in the General Land Office since 1893. He is familiar with the records of the Railroad Division in the General Land Office pertaining to railroad grants. "Government's Exhibits 109, 109-A, 109-B, 109-C and 109-D" were prepared and certified under his direction, for use as evidence in this case, at the request of counsel for the Government. Explaining the manner in which correspondence is filed and kept for reference in this division, witness testified that the letter, when it is received, goes to what is called the mail room, is there docketed and a jacket made for it; the jacket is briefed. All the papers pertaining to that letter are put in one jacket; that is, if there were more than one or two papers, if not, it did not have any jacket. Then the letter is referred to the Division in which it belongs. It is answered there and if the letter relates to one of these particular grants, it is put in the file box of that grant. If it relates to any general subject it is put

in Miscellaneous Files. There is a separate file for each grant. This jacket contained a brief of what the letters contained, that is, the subject matter of the letters. At the time he had the certified copies designated as "Government's Exhibit 109, 109-A, 109-B, 109-C and 109-D" prepared they covered all the correspondence upon that subject found in the files of the General Land Office, but he did not examine the records in the Interior Department thoroughly. He did examine the complete files pertaining to the Oregon and California grant and the so-called Oregon Central grant, being grants under the Acts of Congress approved July 25, 1866, and May 4, 1870, respectively and there were no other papers in these files pertaining to the subject matter of these exhibits, except the ones set out in said exhibits. He took all the boxes containing the files of letters received, examined these and then went through the press copies of the answers, that is he read them and he did not find in the files anything pertaining to the restrictions of the grant, upon the sale of the granted lands, other than disclosed by "Government's Exhibits 109, 109-A, 109-B, 109-C and 109-D."

Whereupon, witness testified as follows:

"Q. Is there any record in the General Land Office showing that that subject was ever before the General Land Office, except this one transaction?

A. This is all found in the Railroad Division. As to other divisions, I could not answer."

Whereupon witness further testified that he is familiar with the general system of handling the correspondence in the General Land Office and if any correspondence had reached the General Land Office, or any transaction had been addressed to the General Land Office in any manner pertaining to the construction or administration of these provisions of the grants restricting the sale of the granted land, they would have been referred for action and for filing to the Railroad Division. He gained his familiarity with the manner of handling the mail in the General Land Office in what is known as the Mail Room, where the mail is received and distributed. He worked there for two, or three or four years. He does not exactly remember how long. He has examined the records of the General Land Office and particularly the Railroad Division so that he can explain the circumstances under which the patent of June 21, 1909, designated as "Supplemental Patent No. 8 for 161.75 acres of land, covered by Selection List No. 2, of September 28, 1871" was issued to the Oregon & California Railroad Company. The patent was issued for the fractional northeast quarter, the southeast quarter and the fractional southwest quarter, away back. Subsequently Mr. Hoehling, on June 10, 1909, requested that as a re-survey had been made of that and the plat showed the description to be different from the description which is in the patent, a supplemental patent correcting the description so it would agree with the survey, be issued, and that was the reason the second patent was issued, to correct that description in the original. It was just to cor-

rect the original patent and not to cover any additional lands. To correct the description of the patent dated May 29, 1872. He has examined the lists and selections filed from time to time by the Oregon & California Railroad Company under the Act of July 25, 1866, and also under the Act of May 4, 1870, upon which patents were issued, as to the form of these lists and selections and the name of the party who acted for the Railroad Company as Land Agent or Land Commissioner, and has prepared a statement which accurately sets forth the facts.

Whereupon witness further testified as follows:

"Q. Please refer to this statement, and explain fully concerning the forms of lists and selections used in the administration of these two land grants, and the names of the persons acting on behalf of the Oregon and California Railroad Company from time to time as land agent, or acting land agent, or Land Commissioner.

A. Under Act of July 25, 1866, no lists or selections were made except in the name of the Oregon and California Railroad Company. Under the last named Act lists and selections were made in the general form of List No. 1 (Government's Exhibit 111), dated July 12, 1870. Selections and lists continued in this general form until early in 1876, and were signed by I. R. Moores as Land Agent. Beginning on or about June 17, 1876, the selections and lists were upon the general form of List No. 8 (Government's Exhibit 111-A), signed by Paul Schulze as Land Agent. Selections and lists continued in this general form until about the year

1885. From the latter date the selections and lists were upon the general form of List No. 16 (Government's Exhibit 111-B), signed by George H. Andrews as Acting Land Agent, until November 19, 1888, when William H. Mills was appointed Land Agent, and thereafter the lists and selections were in the general form of List No. 17 (Government's Exhibit 111-C), until September 15, 1904, at which latter date Charles W. Eberlein was appointed Acting Land Agent, and thereafter the selections and lists were in the general form of List No. 104 (Government's Exhibit 111-D), until June 15, 1908; at the latter date Henry Conlin was appointed Acting Land Agent, and thereafter the lists and selections were in the general form of List No. 106 (Government's Exhibit 111-E), until September 21, 1908, when B. A. McAllaster was appointed Land Commissioner, and since that time lists and selections have been in the general form of List No. 116 (Government's Exhibit 111-F).

Under the Act of May 4, 1870, all lists and selections upon which patents have been issued were made in the name of the Oregon and California Railroad Company. Under the latter act the selections and lists upon which patents have issued were in the general form of List No. 1 (Government's Exhibit 111-G), dated January 20, 1888, signed by George H. Andrews as Acting Land Agent, until November 19, 1888; since which latter date all lists and selections have been in the general form of List No. 11 (Government's Exhibit 111-H), signed by

William H. Mills as Land Agent. No lists or selections have been made under the Act of May 4, 1870, since Mills ceased to be Land Agent for the Oregon and California Railroad Company."

Whereupon the lists and selections referred to in the answer of the witness are produced and identified respectivly to conform to the answer of the witness.

Whereupon the complainant offered in evidence "Government's Exhibits, 111, 111-A, 111-B, 111-C, 111-D, 111-E, 111-F, 111-G and 111-H" excepting the description of lands and blank forms which are not filled out, and which by consent are omitted, to each of which counsel for defendants objected to as immaterial.

STIPULATION.

Whereupon it was stipulated that certified copies of said exhibits just offered may be substituted for the originals and that such certified copies should be read into the record, which said several exhibits are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibits 111, 111-A, 111-B, 111-C, 111-D, 111-E, 111-F, 111-G and 111-H" respectively.

Whereupon the witness further testified that the subject of the issuance of the corrective patent on June 21, 1909, as shown by the records of the office was referred to Mr. Lord, an employe of the Railroad Division, who prepared the letter transmitting the patent to the

Recorder for signature. Mr. Lord is now dead. Everybody knew that this suit was pending, but he could not tell whether Mr. Lord knew it. Witness looked up generally the records of the Railroad Division relating to any correspondence or other transactions involving the provisions of these two grants, restricting the manner of selling the granted lands. There was no other correspondence with other parties, or other transactions relating to the same subject that he was able to find.

Whereupon the witness, upon cross-examination, further testified that the stamp on the letter of June 10, 1909, purporting to be signed "A. A. Hoehling, Jr., attorney for said Company," referring to the Oregon Railroad and Navigation Company which contained on the upper right hand corner these words and figures "65218. Registered G.L.O. June 12, 1909. Referred to ———————— Assigned to Lord." was put on in the Mail Room where they received the mail and the Mr. Lord there referred to is F. C. Lord of the Railroad Division, who had charge of the lists and patents. The presumption is that this matter was referred to Mr. Lord and that he prepared the patent and sent the letter transmitting the patent to the Recorder for the President's signature. Mr. Lord was in the Railroad Division in that capacity a great many years, and was between 50 and 60 years of age somewhere when he died.

Whereupon the witness further testified as follows:

"Q. Isn't he the man that would know, probably,

as much about the pendency of this suit to forfeit these land grants as any other man in the Railroad Division?

A. Not that I know of.

Q. Wasn't it his duty to know about the issuance of patents, and to take orders as to the refusal to issue further patents?

A. Yes, sir.

Q. Now, if there was a suspension of the further issuance of patents, on account of this suit or for any other reason, Mr. Lord would be the man to have that knowledge, wouldn't he?

A. He would be very apt to have it, yes, sir.

Q. Whom would he get it from?

A. Just like the rest of us.

Q. I mean, from whom would he get it?

A. Unless he was told unofficially, there would be an order issued.

Q. If it came to him unofficially, from whom would it come?

A. From his chief, or somebody told him.

Q. Who was his chief?

A. I don't know whether it was at that time a Mr. Dudley or Obenchain.

Q. It was a matter of common knowledge that the Government, after the passage of the resolution of April 30, 1908, by Congress, was prosecuting this suit to forfeit these lands? I mean, a matter of common knowledge in the office of the General Land Office?

A. I don't know whether it was common knowledge. I couldn't say that of course.

Q. The officers in the Railroad Division knew it?

A. I couldn't answer that.

Q. In your direct examination, I understood you said everybody knew it?

A. Well, at that time, 1909."

Whereupon the witness further testified that the letter of Mr. Hoehling of date June 10, 1909, was referred to Division F, Oregon and California Railroad Company, and is a request for a supplemental patent, and this is the patent about which he has been interrogated. Acting upon that request the patent was issued.

Whereupon defendants offered in evidence, as part of the cross examination of the witness this letter marked "Defendants' Exhibit 250," and requested that the exhibit be read into the record and withdrawn by consent, which said "Defendants' exhibit 250" is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Defendants' Exhibit 250."

Whereupon the witness further testified that the original jacket copied on the first page of "Government's Exhibit 109" is the original jacket which should have contained the letter of Attorney General George H. Williams of date June 27, 1872, addressed to Willis Drummond, Commissioner of the General Land Office, and replied to by Mr. Drummond in his letter of July 16, 1872, which is set out and made a part of "Government's Exhibit 109" and is identified as "Government's Exhibit 109-D." The number of the original jacket was so faint, perhaps it was not taken. The number shown is "7128" in red ink and the letter on the jacket is "K," which refers to the series. They used to use these letters instead of the years. The number "7128" was given when it was received in the office to identify it. Referring to letter "L" on the copy of the jacket when it is letter "K," the letter on the original is so faint perhaps it was not taken. Witness could not tell what the letter "R" in ink on the margin of this jacket stood for in these days, but thinks it was to show the Recorder put it in the book. That is, that the letter of June 27, 1872 was recorded. It would be recorded in two books. One in volume 1, page 13, and this would be found in the General Land Office somewhere. He went and looked up the original volume where it was recorded when it was received here, but never noticed the volume number. He found that letter recorded and the original of it, that is the letter of Williams of June 27, 1872. What he found was merely the record of the receipt of the letter, the letter itself was not recorded. The letter "R" merely indi-

cates that the letter was received and not that there was a record of the letter. The letter "M" in ink under the words "Answered July 16, 1872" stands for Mendenhall, who was a clerk in the office, but is now dead. It would have been his duty to answer this letter of Attorney General Williams of June 27, 1872 and return it to the filing clerk to put in the files and it would then have been in his custody until he returned it to the files. Witness first looked to find this letter of Attorney General Williams of date June 27, 1872, in November 1911. He did not look in the Department of Justice among the files of the Attorney General's office and could not tell if there are any records, letter-books of the letters written by the Attorney-General in 1872, kept in the Attorney General's office and he made no search for them there.

Whereupon witness further testified as follows:

"Q. Now, I notice this envelope, or 'Jacket' as we call it, is simply an envelope of about the size of 4½ inches, about the size of a legal envelope or docket folded about 8x2½ inches, and on one side of it is really the form of a sealed envelope; on the other side are these words: 'Letter No.' printed, and then at the bottom 'Referred to Div.' and 'Received G.L.O. 18' printed. All the rest is manuscript on the face of the jacket? That is correct, isn't it?

A. Yes, sir.

Q. Now, in that jacket, which was produced here in this condition by Mr. Marr in our presence, just awhile

ago, I notice copy of opinion given by Samual M. Wilson, etc., marked in red 'B'—letter 'B'; and I notice a letter from Willis Drummond, of June 14, 1872, addressed to George H. Williams, Attorney General, on paper headed 'Department of the Interior, General Land Office.' And I notice a printed document, with the red letter 'A' on the same, being copy of contract between Trustees of Land Grant, Second, The E. & O. Land Company, and third, The O. & C. R. R. Company; and a letter to Attorney General Williams on the office letter-head of The European and Oregon Land Company, of date January 27, 1872, signed 'Jos. S. Wilson, Prest.' And I notice a letter of June 5, 1872, purporting to be a copy, on paper 'Department of the Interior, Washington, D. C.' signed 'C. Delano, Secretary.' And I notice another letter, on the letter-head of the European and Oregon Land Company, of date January 27, 1872, addressed to Ben Holladay, and signed 'Jos. S. Wilson, Prest.' And I notice another letter, of April 10, 1871, addressed to Hon. Jos. S. Wilson, Prest. E. & O. Land Co., purporting to be signed 'I. R. Moores, Land Agent O. & C. R. R. Co.' And another letter, of no date and no signature, but headed 'Department of the Interior, Washington, D. C. 18—' addressed to Jos. S. Wilson, President E. & O. Land Co., San Francisco, Cala.' Now, are these all of the documents, letters or correspondence, or papers, that you found in this jacket when you first made your search?

A. I couldn't answer that without examining that copy there to check it. I think it is, though.

Q. Well, if these documents that I have referred to all are copied and no others are copied, in Government's Exhibit 109 and 109-A to D, inclusive, then your answer would be that it covers all that was found in the jacket when you went there?

A. Yes, sir.

Q. You didn't find any written opinion there from John H. Mitchell as the attorney of the Oregon and California Railroad Company?

A. No, sir, not unless there was a copy made.

Mr. Townsend: No, it is not there.

Q. As a matter of fact, there is no such opinion in that file, or was in that jacket, written or signed by John H. Mitchell as attorney for the Oregon and California Railroad Company?

A. No, sir.

Q. Do you know how many different people may have had access to this jacket and its contents since July 16, 1872, down to a year ago, when you first examined it?

A. No, sir.

Q. Every clerk in the General Land Office, or in the Railroad Division, would have access to that, wouldn't they?

A. If they had some business, yes.

Q. As a matter of fact, it was out in the hall, where any one could come along and look at it?

A. It was out in the hall, yes, sir.

Q. And this file is in a loose jacket, and how is it kept separate from the other years, or other letters in the file known as the Oregon and California Railroad Company file?

A. That is 1872. There was a band around the 1872 letters.

Q. Well, now, isn't it true, Mr. Casey, that these contents are sometimes not all returned into the same jacket, and that one paper might get into a file for 1873, for instance?

A. Yes—it doesn't very often happen.

Q. It does happen, though?

A. Yes, sometimes.

Q. And isn't it true that sometimes an important instrument, like the assent of a railroad company to a land grant, is examined by some person who is interested, gets into the wrong file, or gets into an entirely different pigeonhole in these records, and is afterwards found in this place, and restored to the proper file?

A. Papers are sometimes misplaced.

Q. And that experience is not altogether unusual, then, in the way these records are kept?

A. It is not very ordinary.

Q. And it sometimes might get into a file entirely different from the Oregon and California Railroad Company, as in a case where an acceptance got into the file of the Northern Pacific Company, and was afterwards found in the wrong file?

A. There is a possibility."

Whereupon the witness further testied that he could not say that sometimes a letter or document belonging in one file may be mislaid and placed inadvertantly in the file of another different company or individual and does not come to light for some years. That is not very liable to happen. These records known as the Oregon and California Railroad Company file, that were in the General Land Office, that is the general files, were not kept in one room, but were in about four rooms. That is, three and the hall, as witness thinks. He thinks there is no clerk, or chief, or officer here in the office that was in charge in 1872. Witness could not answer whether nearly all are dead or are gone or out of the service that were employed in 1872, but that Mr. Marr was the oldest employe in the General Land Office in this Division. That is, the oldest in service, and is the oldest one that would have anything to do, or any connection with, the file of the Oregon and California Railroad Company. Witness does not know who Buxton is, whose name is on this jacket in pencil. This name was on the jacket when witness first examined it. He does not know whether he was a clerk in the office or not.

Whereupon, upon re-direct examination, the witness further testified as follows:

"Q. Mr. Casey, your attention has been called to the fact that the photographic copy of the jacket containing the Government's Exhibits 109, 109-A to 109-D, inclusive, reads at the top 'Letter L,' whereas it appears upon the original to be 'Letter K,' and your attention was also directed to the fact that upon the original jacket it appears to be 'No. 7128,' while upon the photographic copy it appears 'No.——,' the number itself not appearing. Combining these two circumstances, and examining the original jacket and the ink in which the letter 'K' is written and the figures '7128' are written, I will ask you to explain how this probably occurred.

A. The letter 'K' is written in purple ink, and it does not photograph. The figures '7128' are so faint that they possibly did not photograph, or probably did not photograph.

Q. So that this jacket originally was printed in black ink 'Letter L. No.——' and the letter 'K' has been written over the printed letter 'L' in ink, so that if the ink did not take the photograph would show 'Letter L. No.——,' as it was originally printed?

A. That is correct.

Q. Did you find any other jackets relating to this general subject?

A. Two others.

Q. Please produce them.

A. Letter I No. 92,880, containing a letter from Honorable George H. Williams, Attorney General, dated April 20, 1872; and letter K. No. 6956, which contains a copy of letter of June 5, 1872, from the Secretary of the Interior.

Q. Now, can you explain why when the letter of June 27, 1872, was received from Attorney General Williams, the former correspondence was transferred to the jacket in which was placed the last letter received from General Williams upon the subject?

A. The papers were all taken over, presumably, from the way the answer reads, the papers were taken over to the Secretary and brought back, and the letter answered, and all the papers placed in the last jacket.

Q. Do the documents placed in this last jacket, which has been identified here as 'Letter K. No. 7128' bear any filing marks that show that they were intended to be kept in that jacket?

A. Yes, sir.

Mr. Fenton: In what jacket?

A. This last one.

Q. How is that indicated?

A. They are labeled on the inside, each paper, beginning with 'A'—labeled 'A-7128,' 'B-7128,' etc.

Mr. Ogilvy: Are there two A's and two B's?

A. No.

Mr. Fenton: While we are on that subject, I don't understand the reason for the A, B, C, D, E, F, G, H.

A. Each letter was indicated in that manner that went into the file.

Mr. Ogilvy: Were these numbers there when you first examined them, Mr. Casey—A, B, C, D, etc. 7128?

A. I couldn't swear to that. I think they were, though. I didn't notice for that particularly.

Q. I will call your attention to the notation at the bottom of this jacket, 'Letter K No. 7128.' It originally read as follows: 'Received (G. L. O.) June 28, 1872' which was the day after the date of the last letter written by Attorney General Williams; and the date at the bottom was subsequently changed to read July 17, 1872; and a further notation upon this jacket shows that the letter was answered on July 16, 1872. Does this not indicate that the entire files were transferred to the Secretary's office, as you have stated, and were finally refiled on July 17, 1872?

A. Yes, it appears to indicate that. The letter downstairs shows the date it was received was on the 17th. It was taken over, and must have been received informally.

Mr. Ogilvy: It shows it was received the day after it was answered?

A. Yes. It was probably received informally."

Whereupon, the witness further testified that from the records of the Railroad Division, it appears that William H. Mills, who acted as Land Agent for the Oregon and California Railroad Company from 1888 until some time in 1904, also acted during the same period as Land Agent for the Central Pacific in 1888, but he could not tell for how long thereafter. Mr. Lord died about a year ago, to the best of his knowledge. Other people besides the clerks of this Division had access to these files; an attorney in good standing, and attorneys for the Railroad Companies have access to them. It is a frequent occurrence for attorneys representing those land grant companies to go up and inspect these files. He has not had charge of the files but believes the attorneys had had as much assess to these old files ordinarily as the employes of the Department. He could not state how recently these files had been examined by attorneys for the Railroad Companies, but he does not mean by his testimony to raise any implication that papers have been taken out of their proper files either accidentally or intentionally by the employes of the division.

Whereupon upon re-cross examination, the witness further testified that he does not mean to imply by his testimony that any employe or attorney of any of these railroad companies intentionally or accidentally took out any of these documents.

Whereupon the witness further testified as follows:

"Q. I notice that this jacket you referred to under the head of 'Letter K' bears a number '6956' and is headed 'Honorable Secretary of the Interior, June 5, 1872.' and down below in pencil 'Copy of'—then in ink 'Reply to ours of the 20th ult.' and then in pencil this language: 'This copy belongs to certain papers filed by Attorney General Williams May 20, 1872, and has been placed therewith:' and in brackets 'To be filed:' then the usual blank 'Referred to Division F' in ink; then 'Received (G. L. O.)' in print; in ink 'July 16, 1872.' This is the jacket that you referred to as from which the transfer was made to jacket No. 7128?

A. No, sir; it is the first one—92880.

Q. Well, that is one of them—one of the two jackets?

A. Yes, sir.

Q. In whose handwriting is this pencil memorandum 'This copy belongs to certain papers filed by Attorney General Williams May 10, 1872, and has been placed therewith. (To be filed') And at the bottom in pencil is the name 'Cromwell'. Is that in his handwriting?

A. I couldn't tell you that, sir. There was a clerk here by the name of Cromwell."

Whereupon witness further testified that Cromwell was just a clerk in connection with the Railroad Division and would have access officially to these files, and his

duties would sometimes require him to have such access. Cromwell died about 1895. The pencil memorandum on this jacket was there when witness first saw it. He notices that the jacket now contains a copy of a letter of June 5, 1872, purporting to be from Secretary Delano to Commissioner of the General Land Office Willis Drummond, which is typewritten on Department of the Interior stationery, but he does not think the original is in '7128.' The original letter of the Secretary addressed to Commissioner Drummond is not in these files and he cannot tell where the original is. It would probably be in these files, he could not tell why the original letter of Secretary Delano addressed to Commissioner Drummond should be in the Secretary's office and not in the Commissioner's office. This is a typewritten and not a photographic copy witness thought.

Whereupon witness further testified as follows:

"Q. Now, I notice this 'Letter I. No. 92,880' jacket is endorsed in writing 'Hon. George H. Williams, Attorney General, April 20, 1872. Papers in the case of Oregon & California R. R. Co. &c. Acknowledged May 20, 1872. Papers sent to Secretary May 20, 1872. Sec. to Atty. Genl. June 14, 1872, transmitting copy of Secretary's opinion;' and then 'Received (G. L. O.) April 22, 1872.' Now, is that a part of this same file relating to this correspondence between Attorney General Williams and the Commissioner of the General Land Office?

A. Yes, sir.

Q. And I notice the figures '15-139' on the back of that jacket. What does that mean?

A. It means the volume in which the thing was docketed.

Q. Now, in that jacket I now find an original autograph letter of George H. Williams, written on stationery 'Department of Justice, Washington, April 20, 1872,' addressed to Hon. Willis Drummond, Commissioner General Land Office, Washington, D. C. From your knowledge of the handwriting of General Williams, or Attorney General Williams, would you say that was an autograph letter of his? It is written in the same hand as the signature, isn't it?

A. Yes, sir.

Q. And appears to be an autograph letter, doesn't it?

A. Yes, sir.

Q. Now, is that photographed by you, or did you photograph the carbon copy?

A. That was photographed.

Q. The letter itself?

A. Yes, sir.

Q. The photograph would take all this ink, would it?

A. Yes, sir.

Q. Now, you found that as the only inclosure in jacket No. 92,880 at this time?

A. That is all.

Q. These three jackets are the only jackets that you found anywhere in the office of the General Land Office, or in the files of the General Land Office, relating to this subject matter?

A. That is all.

Q. You don't mean to say that there are no other? There may be some other correspondence?

A. That is all I found.

Q. That is all you found. That is all.

Mr. Townsend: In your investigation of the records relating to the Oregon and California grant, you have also examined the files of the office of the Secretary of the Interior, have you not?

A. Yes, sir."

"Counsel for defendants admits that the counsel for the Government, through Mr. Casey, produces a jacket from the files of the Oregon and California Railroad Company, formerly the Oregon Central, indorsed thereon 'Received January 20, 1869. Dated January 19, 1869. From Hon. George H. Williams, U. S. Senate. Subject, encloses S. Bill No. 776, To authorize the Oregon Central R. R. Co. to file assent to Act July 25,

1866, and asks for Secretary's views. Case 2, G 1, and answered January 20, 1869, page 565, Volume 1 Railroad,' and therewith a letter of George H. Williams of date January 19, 1869, headed 'Senate Chamber,' addressed to 'Hon. O. H. Browning, Secretary of the Interior, Washington, D. C.' together with a pamphlet enclosed therewith entitled 'Statement of facts relative to the incorporation and organization of the Oregon Central Railroad Co. of Salem, Oregon,' being a copy of Government's Exhibit 105."

STIPULATIONS.

Whereupon it was agreed that the circular or pamphlet designated as "Statement of Facts" need not be included because it is a duplicate of "Government's Exhibit 105." It was also admitted that by letter dated January 20, 1869, Joseph Gaston transmitted to the Secretary of the Interior a copy of "Government's Exhibit 106," entitled "The Inside History of the Oregon Central Railroad Companies," which was filed in the office of the Secretary of the Interior on March 15, 1869.

And it was further stipulated that if the Government shall offer certified copy of the jacket enclosing this document, the document itself need not be repeated for the reason that it is an exact duplicate of "Government's Exhibit 106." And it was further stipulated that if this copy is made, the ink writing will be shown

on the photograph, by ink if necessary."

Whereupon it was further stipulated between the parties, by their respective counsel, as follows:

STIPULATION.

Mr. Townsend: It is stipulated that J. F. Casey, if recalled as a witness on behalf of the Government, would testify that the records of the General Land Office show that the forest lieu selections referred to in Exhibit No. 9 to the joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, were examined as to the title of the base lieu land tendered to the Government by the following named persons, who were law clerks in the General Land Office during the time that said forest lieu selections were pending in the Interior Department, namely: F. C. Dezendorf, Albert G. Hall, Harry W. Happy, Marvin M. McLean, Fletcher Meredith, Benj. F. Sparhawk, George C. Stewart, Alva S. Taber, James D. Tyler and Hugh H. Williams; and that, in so far as the titles to any of said base lands were accepted and approved by the Interior Department, as set forth in said Exhibit No. 9 to said joint and several answer as corrected by Exhibit No. 17 to the Stipulation as to Facts entered into in this suit, the same were approved and accepted by the foregoing named law clerks.

It is further stipulated that, if the foregoing named law clerks were called and sworn as witnesses on behalf of the Government in this cause, each of them would

testify that he approved the title to said base lands without actual knowledge of the provisions of the Act of April 10, 1869, or the Act of May 4, 1870; that he passed the title after an examination in the following manner: Accompanying each forest lieu selection was an abstract of title showing patent by the Government to the Oregon and California Railroad Company, conveyance by the latter to a certain grantee, and conveyance by the latter or some subsequent grantee to the United States; the patent record of the General Land Office was examined to verify the statement in the abstract as to the issuance of patent—all of which patents were recorded and of record at length in the General Land Office; the tract books were then examined to ascertain that the lands tendered as base had not been used before for the same purpose, and to ascertain generally whether the lands tendered were proper base for the selections tendered; each of said law clerks passing upon said titles as aforesaid then approved the title, assuming that the patent created an unconditional and unrestricted title, and without examining the granting acts, and without actual personal knowledge of the provisions of the Act of April 10, 1869, or the Act of May 4, 1870; after the title to the base lands tendered had been examined in this manner, the selection was referred to the several divisions of the General Land Office to ascertain if the selected lands were subject to any prior adverse right of any kind; after the selection had been approved by each division of the General Land Office examining the subject, it was referred to the Chief of the Forest Lieu

Division, with the certificates of all of the law clerks and other employees who had examined and approved the selection as above stated; the Chief of the Forest Lieu Division then approved the selection without special examination of any of the subjects investigated by the law clerks and chiefs of the several divisions as stated above; in reliance upon the approval of the latter, the selection was then approved by the Commissioner of the General Land Office, and in like manner was approved and patent ordered issued by the Secretary of the Interior.

It is further stipulated that, for the purpose of this case, it shall be considered that the parties above named have been sworn and testified as heretofore set forth, subject to such objections as counsel for defendants now desire to interpose.

To which testimony contained in said stipulation, and the whole thereof, and to each and every part thereof, excepting as to the approval by the Secretary of the Interior, the defendants objected upon the ground that the same is incompetent, irrelevant, and immaterial and particularly upon the ground that such testimony cannot be considered to impeach, qualify or limit the action of the Secretary of the Interior, or of the United States acting by and through him as such Secretary.

STIPULATION.

Whereupon it was stipulated that Mr. Charles J.

Winton, if called as a witness would testify as follows:

"That he and three of his former business associates came from Wisconsin, where they were engaged in business, in the year 1901, for the purpose of purchasing timber lands in Oregon, which trip resulted in a written contract between the Oregon and California Railroad Company, as vendor, and A. B. Hammond and Charles J. Winton, as purchasers, covering approximately 45,000 acres of these railroad lands situated in the Counties of Tillamook, Yamhill and Washington, all of which were included in the West Side grant with the exception of 160 acres. The lands covered by this contract are not involved in the present suit, No. 3340, but are involved in the separate suit instituted against Hammond and Winton and others, being suit No. 3449. The contract referred to was dated August 16, 1901, but was in fact executed early in September of the same year, when Mr. Winton made a second trip to Oregon for that purpose. This general statement is made to explain the references by Mr. Winton in his testimony to the different trips to Oregon. The transactions referred to in the testimony of Mr. Winton now offered occurred after the signing of the contract dated August 16, 1901, and during Mr. Winton's second trip to Oregon, which was some time in September, 1901."

Whereupon it was further stipulated that the George H. Andrews referred to by witness in his testimony was George H. Andrews who, as shown by other testimony in this case was for many years acting land agent and

secretary of the Oregon & California Railroad Company, and who died about two years ago, to all of which testimony the defendants objected upon the ground that the same is incompetent, irrelevant and immaterial and particularly upon the ground that it appears from the testimony of Winton that the so-called verbal option was not in fact or in law an option, but if anything, a general conversation with a prospective purchaser of some of these lands; that it does not appear that Andrews, either as secretary or acting land agent, had any authority to make or offer to make a verbal or any option; that the terms of the verbal option were not reduced to writing, were not certain either as to price or quantity or location, and the same would be void under the statute of frauds because not in writing and void because uncertain; that the minds of the parties did not meet either as to price, acreage, time or terms.

Whereupon counsel for defendants admitted that contract No. 6242 of date August 16, 1901, was executed by the Oregon & California Railroad Company, as party of the first part and A. B. Hammond and Charles J. Winton, as parties of the second part, and that it was executed by the Company in the words stated and that this is the contract referred to in the testimony of witness.

Whereupon a certified copy of this contract of August 16, 1901, as recorded in the county records was admitted in evidence on behalf of the Government. to which contract reference is made in this Statement of

the Evidence, as if the same were fully written herein and the same may be considered a part of this Statement of the Evidence.

Whereupon it was stipulated that said witness C. J. Winton, would further testify as follows:

"Q. What else did you have to do with Mr. Andrews at that time in reference to the purchase of these lands, and what else did you do?

A. I talked with Mr. Andrews regarding the timber resources of Oregon, chance of manufacturing, and asked him as to what his opinion was as to my coming to Oregon to live—whether there was an opportunity here of carrying on a successful active operation in his judgment, and he told me that there was and that he thought I could make no mistake in coming, and before I left for my home—I am not sure whether it was on that trip or the third trip I made, because I came to Oregon a third time in the Fall—it was on the second trip, I think I am correct in saying it was on the second trip, and I had a verbal option from Mr. Andrews on one hundred thousand acres of Southern Pacific land, or the Oregon and California land—

Q. When you speak of the Southern Pacific lands you refer to the lands of the Oregon and California Railroad Company—

A. Which were in Oregon.

Q. Which is a part of the Southern Pacific system, so far as the operation is concerned?

A. Yes, sir. The lands upon which I had this option embraced all the so-called Oregon and California Railroad lands in the State of Oregon, and were to be selected in lots of not less than ten thousand acres in one locality, burned spots and bare spots thrown out, and the price was eight dollars an acre, and the terms were one-tenth down, and the balance in nine annual payments, six per cent interest. The price on the lands of the Oregon and California Railroad Company had been advanced—their general price—from seven to eight dollars per acre, shortly after the purchase made by Mr. Hammond and myself of the Tillamook tract.

Q. The first thing you did when you came to Portland on the second trip was to go before Mr. Andrews in company with Mr. Hammond and close up your contract?

A. Yes, sir.

Q. Your option for additional lands was a subsequent transaction?

A. Yes, sir.

Q. How long was it before you returned home on that trip that you had this conversation with Mr. Andrews with reference to the purchase of additional railroad lands?

A. We had talked in a general way about different tracts of lands that he was offering for sale and during one of those conversations I brought up the proposi-

tion of getting an option on one hundred thousand acres from him in groups, as I have stated. This—shall I tell you what was in my mind on that thing, or don't you care?

Q. Go ahead and state completely the negotiations you had with Mr. Andrews upon that subject, give the nature of the understanding you had with him, and any purpose you had you may add by way of explanation.

A. He gave me the option and said that this would mean the withdrawal of the Oregon and California lands in the State of Oregon from market until we had made our selections.

Q. That is—now, to make that definite, Mr. Winton, he gave you an option to select one hundred thousand acres from all of the unsold railroad lands?

A. Yes, sir.

Q. The lands to be in tracts of not less than ten thousand acres in any one particular locality or watershed?

A. Yes, sir.

Q. And the price was to be eight dollars an acre?

A. Yes, sir.

Q. How long was the option to run?

A. The option was to run until I could tell him definitely whether we would make the purchase, and

payment would be made then of one-tenth the purchase price.

Q. That is when you exercised the option?

A. When we made the selections.

Q. But how long were you to have to make the selection—how long after you got home?

A. A year to make the selection, if we told him we would take it—we were to have a year to make the selections.

Q. How long were you to have to tell him whether you would take it?

A. Until I could confer with my associates.

Q. That is after your return home?

A. The second time.

Q. And he understood in a general way that that would be within a couple of weeks or so—something like that?

A. Something like that.

Q. Now, did you have any contract in writing covering that option?

A. No contract in writing, no writing about it.

Q. You simply had a verbal option and probably an understanding that some written agreement would be

made if you notified him that you and your associates would exercise the option?

A. Yes, sir.

Q. After your return to your home after the second trip you did not exercise the option, and so notified him, I assume?

A. Yes, sir.

Q. And that was the end of that transaction?

A. Yes, sir.

Q. For a course of two or three weeks, then, you had under consideration, as you understand it, had the right to exercise the general option which you have described?

A. Yes, sir.

Q. Well, now, why didn't you exercise that option, Mr. Winton?

A. I favored exercising that option. My associates thought it would be better—they didn't favor it and they were in the majority and I let it lapse.

Q. What objection did they have to the deal?

A. They knew of the lands that we were buying on the Kilches River for less money, and I told them that we could buy claims here—at least they were so represented to me and we had bought some of them for less money than the railroad company's offer. We could

get them direct from the homesteaders at from six to six and a half an acre; the railroad company asked eight dollars.

Q. Who made that objection? Who of your associates objected to the exercising of this option upon the ground that you have just stated?

A. Why, it was talked over in a general meeting that we had, and that was the conclusion arrived at.

Q. How did Mr. Mortenson feel on that subject; how did he express himself, I mean?

A. I don't know as I could say. He has generally been pretty lenient with me in letting me have my own way in transactions we have been interested; I think he would have agreed if I had urged him to. I wasn't perhaps as strong in my conviction that that was the thing we ought to do as—I don't remember how he expressed himself on that.

Q. Do you remember how the Gilberts expressed themselves?

A. I think it was the general talk that we had better rest a little bit and await developments.

Q. Do you remember how Mr. Ross and Mr. Smith expressed themselves with reference to this option?

A. I think Mr. Ross didn't favor buying it.

Q. Well, now, if you knew that you could get lands from homesteaders at six dollars and a half an acre,

why did you favor the purchasing of timber lands from the railroad company at eight dollars an acre?

A. I thought it was a chance to do a big amount of business on a small amount of money. The selecting of that land would tie up all the railroad company's lands in Oregon for a year, and I didn't think it could be done inside of two years. In the meantime we would select out the choice tracts of ten thousand acres at eight dollars an acre, and I thought we could in turn sell them and make a good turn on them at an advance over what we had paid.

Q. Well, now, neither you nor your associates had learned of anything that influenced you in determining whether you would exercise that option?

A. Not a thing. The question of the title of these lands never came up in any way, shape or manner that we have had any occasion to consider it until this agitation in 1907. We considered that the contract that we had with the Oregon and California Railroad Company was just as good as though we had a contract with the United States Government for that much land, and that we got exactly the same title.

Q. I understood you to say yesterday that you and Mr. Mortenson and your associates on your return to Wisconsin, the first trip, considered that you could afford to pay more for these railroad lands than for the homestead lands because of your confidence in the titles?

A. And the fact that they were grouped up. It costs money to group up lands. Some one has to stay here and meet the man when he comes in to sell, got to meet him and wait for him until the time comes when he wants to sell.

Q. Now, if that consideration influenced your associates and yourself on your first trip to Oregon, what occurred between these two trips that you know of that induced your associates to reverse their position and recommend not taking these additional lands because homestead lands could be bought for less?

A. Well, the transaction of these one hundred thousand acres was a large transaction and they didn't care to go into a transaction of that magnitude; they didn't want to obligate themselves for that much money. The business had developed into one of a great deal larger magnitude in just a few months than any of us contemplated when we first came to Oregon and it was turned down on that account.

Whereupon Frank Griffith, called as a witness on behalf of the complainant, and being duly sworn, testified: That he is in the employ of the Government at the present time and has been in its service since 1899, and during that time he has been employed in the Interior Department and under assignment to the attorneys for the Government in connection with public land cases and is at the present time assigned by the Interior Department to assist counsel for the Government in this

Oregon and California land grant case and other pub
land cases; that at request of counsel for Government
this case he examined the files of the office of the Sec
tary of the Interior and the General Land Office wi
reference to all correspondence and all documents rel
ing to land grants of the Oregon and California Railro
Company that are involved in this suit. He found amo
the files of the General Land Office and the office of t
Secretary of the Interior, correspondence relating to t
construction of the Act of April 10, 1869, which has be
introduced in evidence in this case as Government's E
hibit 109, and this exhibit together with the other doc
ments that have been introduced in evidence by the d
fendants in connection therewith, constitute all of t
letters, files and other records relating to that questi
which are on file in the office of the Secretary of the I
terior and the General Land Office; he made a caref
search to ascertain if what he has stated is true, exten
ing over a period of several weeks. He made differe
trips, once in regard to the land office and at anoth
time in regard to the Secretary of the Interior's offi
and examined every document on file in either offi
relating to these two grants; these files included the l
ters that had been received by the Commissioner of t
General Land Office, or by the Secretary of the I
terior, in any way appertaining to these grants, or
least, the files purport to contain those letters.

"Q. I will ask you whether during the early a
ministration of the Oregon and California Railro
Company land grants, being the Act of July 25, 186

and the Act of May 4, 1870, involved in this cause, who, if any one, acted as the medium of communication between the railroad company or its officers on the one hand, and the Interior Department, or Commissioner of the General Land Office on the other part?

Mr. Fenton: I object to that as calling for the opinion of the witness, and his conclusion from numerous documents and files and from the correspondence itself, and is therefore not competent, the documents being the best evidence.

A. George H. Williams, both while he was in the Senate and was Attorney General for the United States.

Mr. Townsend: Q. About how many communications did you find which were presented to the commissioner of the General Land Office or the Secretary of the Interior by George H. Williams which emanated from the Oregon and California Railroad Company or its officers relating to these land grants?

Mr. Fenton: Same objection.

A. I should say about forty-five.

Mr. Townsend: Q. Did those letters relate to varied subjects or to one particular subject?

Mr. Fenton: Same objection.

A. They related to every subject connected with the road.

Mr. Townsend: Q. Including filing maps of location, etc., of lands, issuance of patents, and subjects of that kind?

A. Yes."

Whereupon the witness further testified that during a part of the time he was engaged in examining the records of these offices Mr. Townsend, counsel for the Government, personally participated with him in the work. A. A. Hoehling, Jr., is the Washington Attorney, or one of the Washington attorneys, of the Oregon and California Railroad Company, the California and Oregon Railroad Company, Central Pacific Railroad Company, and Southern Pacific Railroad Company, or allied companies which had land grants. Witness during that time, and while he was examining the records of the General Land Office and of the office of the Secretary of the Interior, found Mr. Hoehling or his assistants engaged in a search of those records relating to land grants of the Oregon and California Railroad Company. Witness is familiar with Government's exhibit 105, being "Statement of facts relative to the incorporation and organization of the Oregon Central Railroad Company of Salem, Oregon," and found a copy of that pamphlet in the files of the office of the Secretary of the Interior. Whereupon, upon cross examination the witness further testified that he did not read the whole of Government's Exhibit 105, but from the outside cover of it and about the last page of it, he would say that it is the same thing. He did not read either of them all the way through;

he read the outside cover and the last page. He saw no more than one pamphlet there, that is the only one of its kind that he saw on file back there were other pamphlets but not on that subject. The one he saw was Government's Exhibit 105. He was going through those files on two different trips. The trip that he found the pamphlet was in 1912, about the end of March. He found these various documents, including the correspondence, and communications from the various companies to the Commissioner of the General Land Office and the Secretary of the Interior pretty well scattered around the General Land Office. They did not keep the same system; whether the system was bad or not he would not want to say, but it was the old style system of filing that was followed, there was a place for everything, but nearly everything was in that place. It goes by years. They would just put on the year 1868, and everything that related to a railroad company for that year would be there; there would be a band right on the outside of it, but it just goes by the year. There is a band around 1869, too, and if that band happened to get loose and the papers detached, the papers for the several years might be mixed. He could not say whether the files of the Oregon Central of Salem were separately kept or not, and would not say that they were found indiscriminately among the files of the Oregon and California Railroad Company and the Oregon Central, West Side. He does not recollect whether he found a separate file for the Act of May 4, 1870, or found a separate file for the Oregon Central. He saw that Book

of Letters Received, but did not pay much attention to that part, because there was not much correspondence there at that time. It was generaly given under the name of the person who wrote the letter. No one showed him where these files were, as he was pretty well acquainted where they were, or where they ought to be, but he went down with another fellow and they hunted for them and found them. He had worked at this thing for over thirteen years and knew where all of those files were and where they ought to be.

STIPULATION.

Whereupon it was stipulated that the court should take judicial notice of the pleadings, records, files and proceedings in each of the suits in equity referred to in Exhibit No. 10 of the joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage herein.

Whereupon Richard Koehler, called as a witness on behalf of complainant, being first duly sworn, testified; that he now lives and has lived in Portland since 1874; that he was born in Germany; in 1874 he came to the United States as the financial agent or representative of the German bondholders of the Oregon and California Railroad Company under its bond issue of 1870 and some subsequent issues; he was connected with the railroad in various capacities as the representative of the bondholders committee jointly with Mr. Villard

and others for some time, and when the road was reorganized in 1881 became vice-president; was vice-president before that and was manager or local manager of the property. When the road was placed in the hands of a receiver in January 1885 he became such receiver and had charge of and managed the road during the receivership until June 6, 1888, when the receivership terminated. He then became general manager of the railroad and acted in that capacity until 1904. He is and was familiar with the railroad, the nature of its property, the character of the track, extent of the track, extent and character of the rolling stock, depots, buildings and other equipment, and has been so familiar since shortly after he came to Oregon in 1874. At the time the mortgage of July 1, 1887 was executed the Oregon and California Railroad Company owned 451 miles of railroad in Oregon; the mortgage covered that, together with any additional mileage that the railroad might afterwards acquire, and the company had this number of miles of railroad as early as January 19, 1885. After the railroad was reorganized in 1887 and 1888, as set forth in the pleadings and evidence in this case, the railroad was extended from Ashland to the southern boundary line of the state, connecting with the line which had been extended from the south; since that time the company has constructed and has bought and reconstructed a number of miles of railroad, until the present mileage is about 661 miles and a fraction, but he does not know the exact mileage at this very moment, but would have to refer to some

of the annual reports or statements, but it is over 66
miles. In his judgment the railroad of the Orego
and California Railroad Company, including a
equipment and rolling stock, and the other propert
mentioned in the mortgage, on July 1, 1887, with th
exception of the land grant lands, was of the value a
that time about $50,000 a mile. To which last name
testimony the defendants objected as incompetent an
immaterial, but the competency does not go to th
qualification of the witness to testify on that subjec
and it was understood that this objection should go t
all the rest of the testimony of the witness upon th
subject. The witness further testified that the valu
of the road, after that time, has increased and to-da
with its 660 miles of track, or more, he thinks the rea
sonable cash value of the road exceeds $50,000 a mil
The mortgage of July, 1887, restricted the bond issue t
$30,000 a mile, that is, bonds were issued in accordanc
with the terms of the mortgage, and these bonds wer
never issued to a greater extent than the limitatio
provided for in the mortgage. Whereupon upon cros
examination on behalf of the defendant Union Trus
Company the witness further testified: That in h
testimony he estimated the value of the road at the tim
of the Union Trust Company mortgage at $50,000
mile and bases that figure upon his remembrance o
the value of the railroad property generally, the cos
of construction of railroads, and its prospective earn
ing power. These are the three elements he woul
mention, and also his knowledge of railroad propert

generally. The road was finished to a connection with the lines of the Central Pacific in the State of California, except the part to be built over the Siskiyou Mountain Range. While this construction was quite expensive, yet it would have created practically a through line between the Northwest and Portland, Oregon, and San Francisco, and there was to be expected a large amount of passenger travel as well as freight travel to be gradually developed. He took this into consideration when he stated that the property was worth $50,000 a mile. He figured that if the connection was made with the California and Oregon line in California, there would be a future probably for the road. If connection had been absolutely impossible for whatever reason it may have been, the value would have been less, how much less he is not prepared to say. The cost of construction from Ashland south was very great. That was an expensive piece of road to build, that is to a connection with the California and Oregon line over the Siskiyou Mountains. The road was only once in the hands of a receiver, but it was near bankruptcy often; it was near bankruptcy in 1884, but never came to actual bankruptcy until January, 1885. His testimony that the value of the road has increased since that time up to the present, is based also upon the consideration of the traffic arrangements between the railroad and the Southern Pacific and what is denominated by the Government as the Southern Pacific System. Without through traffic, the value of the property would not be as much as it is by enjoying this

through traffic. Suppose that in the future, or imm
diately, or at any time these traffic arrangemen
should cease, and the Southern Pacific, instead of co
tinuing to use the line as at present, should use t
Natron cut-off, which comes into the Oregon and Ca
ifornia at Eugene, and connectes with the Central P
cific at Weed, and suppose in addition to that, that
parallel line down the Willamette Valley should co
nect at Eugene with this line over the Central Pacif
at Weed, he could not give any estimate what the Or
gon and California line from Portland to Ashlan
would be worth, but thought however that the increa
in population all over this section of the country wou
in part at least compensate for any loss of travel whi
at present is enjoyed by the only line between Por
land and San Francisco. A condition is possible whe
it would not be the only line down through the Wi
lamette Valley and there is now a line known as t
"Oregon Electric" running to Eugene. If traffic a
rangements were made so as to connect that up and g
across over to Weed then the Oregon and California li
from Eugene to the southern boundary of the sta
would not grow in value as if it remained a monopol
it would be a local line beginning at Portland and en
ing at Ashland, with no transcontinental connectio
whatever, unless it found its own independent conne
tions in California, and unless it should go on an
build, say from Ashland, a separate line on dow
through, but as the conditions are now, it would hav
no connections with anybody or any other line, excep

its own. To which last named testimony counsel for complainant objected for the reason that the Act of July 25, 1866, requires the operation of the railroad from Portland to the southern boundary line of the state and from there connecting with the California and Oregon Railroad in California to the Central Pacific in California, as a continuous line. Witness further testified upon redirect examination, that on July 1, 1887, the railroad from Ashland to the southern boundary line was nearly completed and the same was true of the railroad on the California end northerly to connect with it and that the contract for the construction of the railroad was made early in the year 1887 and work was well along at that time. In the valuation of the road on July 1, 1887, he had taken into consideration the connection of the two lines. He thinks the name of the road constructing the Natron cut-off is the Oregon and Eastern Railroad Company. He is now exclusively an official of the Oregon and Washington Railroad and Navigation Company. He would not go so far as to assume that there will be no future railroads constructed unless there is an increase in business which justifies the investment. He has not taken into consideration the construction of future roads in making his estimates, but does not believe there will be any future road constructed for the sole purpose of depreciating the value of this railroad. The railroad of the Oregon and California Railroad Company is in his opinion an essential link in the railroad service of the Pacific Coast, and in his judgment this

railroad will always possess a value, not only for t
local business, but as a connecting link in the gene
railroad systems of the United States, and particula
the Pacific Coast, but he would say that there is
possibility that several lines of railroad may be bu
within territory which permits of better operating fe
tures as to grades and curvature than the Oregon a
California extension presents, but that fact does n
change his opinion as to the value of the property.

STIPULATION.

Whereupon it was stipulated that Richard Koeh
if called as a witness by the complainant, would testi
that the Southern Pacific Company, one of the defen
ants in this case, is solvent and financially responsi
and financially able to pay all outstanding bonds
the defendant, Oregon and California Railroad Co
pany, the payment of which has been guaranteed by t
Southern Pacific Company, as set forth in the plea
ings and as shown by the evidence and stipulation
to the facts in this case. But the defendants object
the testimony as incompetent, immaterial and irre
vant. Whereupon the complainant offered in e
dence that certain contract, dated November 11, 19
between the Central Pacific Railway Company a
the Oregon and California Railroad Company, as pa
ties of the first part, and the Pokegama Sugar Pi
Lumber Company, as party of the second part, bei
a certified copy of the original contract filed in the
fice of the County Clerk for Klamath County, Oreg

which was admitted in evidence and marked Government's Exhibit 127, which said Government's Exhibit 127 is hereinafter set out and described and made a part of this statement, of the Evidence and identified herein as Government's Exhibit 127.

STIPULATION.

Whereupon it was stipulated by and between the parties hereto that all the facts and circumstances proven by Government's Exhibit 109, should for all purposes be deemed to have been specifically pleaded in detail in the bill of complaint herein, and that the admissibility of said evidence and the legal effect thereof should in all respects be the same as if all of said facts and circumstances had ben set out in detail in said bill of complaint; and that a formal amendment to said bill of complaint may be made at any time herein, in this court or in the appellate court, to carry out the purpose and intent of this stipulation. And it was further stipulated by and between the parties that the replication filed by the complainant herein shall have the same force and effect as if filed after the filing of the amended answers of the defendants and all amendments to the amended answer, the purpose hereof being to waive the filing of a second replication subsequent to the aforesaid amendments to the answers. It was further stipulated by and between the parties hereto that all of the evidence in this case shall be deemed to have been taken after all of the amendments had been made to the pleadings and the issues framed. It

was further stipulated that no further pleadings, answer or amendment on the part of the defendants shall be necessary or required as to the facts and circumstances proven by Government's Exhibit 109, to which the stipulation hereinbefore made refers. It was further stipulated by and between the parties that the corporate records of the defendant Orgon and California Railroad Company shall be considered in evidence as Government's Exhibit 129, and that the originals may be withdrawn, and that such portions thereof as either party may desire may be included in the printed record in this cause and made a part of this statement of facts, subject to any objection that either party may have that the same are incompetent, immaterial, or irrelevant. Whereupon the complainant offered in evidence certified copies of letters on file in the office of the Secretary of the Interior and General Land Office, collectively, and identified as Government's Exhibit 130, it being agreed that the original certified copies may be withdrawn and the documents read into the record, which said Government's Exhibit 130, as read into the record, is in words and figures as follows to-wit: Letter of George H. Williams addressed to Secretary of the Interior O. H. Browning, dated January 19, 1869:

'Senate Chamber,
Washington, Jan'y. 19, 1869.

"Sir:

I respectfully invite your attention to Sec. (1) of an Act entitled 'An Act granting lands to aid in the

construction of a railroad & telegraph line from the Central Pacific Railroad in California to Portland in Oregon approved July 25, 1866,' providing for the disposition of the lands granted by said Act in the State of Oregon.

"Enclosed please find a pamphlet entitled 'Statement of Facts' which fully sets forth the rights & claims of a company designated by the Legislature of said State in October, A. D. 1868, commonly called the 'East Side Company.'

"Enclosed also please find a paper signed by nine members of the Oregon Senate protesting against the action of said Legislature in October A. D. 1868, in which the rights & claims of a company designated in October 1866 commonly called the 'West Side Company' are fully stated.

"I have nothing to say as to the rights or claims of either company, but in view of the fact that the Articles of Incorporation of the West Side Company were not filed in the office of the Secretary of State until after its designation by the Legislature in 1866, & in view also of the fact that the East Side Company cannot file its assent as required by the Sixth Section of said Act, I am apprehensive that the benefits of said Act will be wholly lost to the State unless something is done to prevent it. Will you be good enough to advise me if there is anything in the action of your Department or the views you entertain of this matter making unnecessary

the proposed legislation.

Yours truly,

Geo. H. Williams.

Hon. O. H. Browning,
Secty. Interior,
Washington, D. C."

Also letter written by Secretary O. H. Browning to George H. Williams in response to the foregoing, dated January 20, 1869:

"DEPARTMENT OF THE INTERIOR.

Washington, D. C. January 20, 1869.

Sir:

I have received your letter of the 19th instant, and the accompanying copy of S. Bill 770, to amend 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon, approved July 25th 1866,' with other papers relating to the subject.

Said act of 1866 required the Legislature of Oregon to designate a company organized under the laws of the State to locate and construct so much of said road as was in Oregon, and that the Company so designated should file its 'assent' to the Act of Congress within one year after its passage.

By a resolution adopted by the Legislature, October 10, 1866, the Oregon Central Railroad Company was designated to locate and construct said road in Oregon.

Two companies called the Oregon Central Railroad Company claim to have been so designated. These it appears are locally called the East-Side Company and the West-Side Company.

At the date of the adoption of said resolution by the legislature neither company had been organized as required by the laws of Oregon. The West-Side Company however filed its assent to this Department within the year.

By a resolution adopted by the legislature in October, 1868, the East Side Co. was designated. The purpose of the bill as understood, is to authorize this company to file its 'assent' without prejudice to the rights or interests of the other company, and you ask for an expression of my views as to whether there is any necessity for the proposed legislation.

In reply I have the honor to state, that as the matter now stands, the grant so far as the portion of road in Oregon is concerned, has lapsed, while the grant for that portion of the road situate in California is still in force, and some legislation by Congress is necessary to revive the grant for the Oregon portion of the road.

The proposed bill, if it becomes a law, will, in my opinion, accomplish that purpose.

On the 13th instant, I declined to act upon maps filed by the West-Side Company 'in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject.' I enclose a copy of said letter.

The papers which accompanied your letter are herewith returned.

I am, Sir,

Your Obt. Servant,

O. H. Browning,

Secretary.

Hon. George H. Williams,

United States Senate.

Also letter written by J. H. Mitchell, signed as Attorney for the Oregon Central Railroad Co., Salem, Oregon, addressed to Honorable Jacob D. Cox, Secretary of the Interior, dated April 12, 1869:

"Washington, D. C.,

April 12th, 1869.

Hon. Jacob D. Cox,

Secretary of the Interior.

Dear Sir:

By the terms of an Act passed by Congress and approved July 25, 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' it was provided that the grant so far as Oregon was concerned should go to such company thereafter organized under the laws of Oregon as the Legislature of that State should designate. The sixth section of such act also required the assent of the company so designated to be filed in your Department within one year from the date of the passage of such Act.

No company was designated, however, until October, 1868, when the Legislature by Joint Resolution, which I herewith transmit, designated the Oregon Central Railroad Company, of Salem, Oregon, as the company to take and manage the grant.

By an act passed June 25, 1868, the time in which the first twenty miles, and in fact the whole road was to be completed was extended, and by another act passed at the recent session of Congress, and approvd April 10th, 1869, the time in which the assent of the company designated was to be filed in the Department of the Interior was extended giving one year from that date. This assent will be presented for filing as soon as I can return to Oregon and have a resolution for that purpose adopted by the company designated in Act 1868, which is the only company that ever has been designated by the Legislature. And I now call attention to this matter in order that no action may be taken by your department that will in any way recognize another company known as 'The Oregon Central Railroad Co. of Portland, Oregon, which never has been designated by the Legislature, and which has been attempting to secure some recognition by your department as being entitled to the grant. And in this connection I would attract your attention to a letter of Secretary Browning addressed to Senator Williams dated January 20, 1869, wherein your predecessor decided that unless some such legislation as the act recently passed was had the grant would lapse. In proof of the statement here made I beg leave to submit the accompanying documents which

this communication I ask may be filed in your office to the end that no action may be taken until the assent of the Oregon Central Railroad Co. of Salem, Oregon can be filed.

Very respectfully,

J. H. Mitchell,

Attorney for the Oregon Central Railroad Co., Salem Oregon."

Also letter written by George E. Cole, as Secretary O. C. R. R. Co., dated June 9, 1869, addressed to Honorable Jacob D. Cox, Secretary of the Interior:

"Office of the O. C. R. R. Co.

Salem, Oregon,

June 9th, 1869.

Dear Sir:

Herewith please find enclosed proceedings of the Board of Directors of the Oregon Central Railroad Company of Salem, Oregon, assenting to the provisions of the Act of Congress of July 25, 1866, and acts amendatory thereof, which assent I am instructed to present in your office for filing. In doing so I would respectfully attract your attention to a letter of your predecessor (Secretary Browning) of date January 20th, A. D. 1869, also to report of Senate Committee on Public Lands made March 22, 1869, a copy of which I herewith enclose; and would also attract your attention to an Act of Congress approved April 10, 1869 based on said report, whereby the Act of July 25, 1866 aforesaid entitled 'An Act to aid in the construction of

a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon' was amended so as to authorize the company designated to file its assent within one year from that date. A map showing the location of the road for the first sixty miles will be forwarded at an early day.

Hoping enclosed assent will be filed and requesting an acknowledgment of receipt of same.

I have the honor to be very respectfully,

Geo. E. Cole, Secretary O. C. R. R. Co.

Hon. Jacob D. Cox,
Secretary of Interior,
Washington, D. C."

Also letter signed by I. R. Moores, as president of the O. C. R. R. Co. of Salem, and Geo. E. Cole as Secretary of the O. C. R. R. Co. of Salem, addressed to Honorable J. D. Cox, Secretary Department of the Interior, Washington, D. C., dated September 19, 1870.

"Office of

OREGON CENTRAL RAILROAD COMPANY.

Salem, Sept. 19, 1870.

Sir:

At the request of J. Gaston, Secretary of the Oregon Central Railroad Company of Portland, Oregon, we the undersigned hereby certify that 'The Oregon Central Railroad Company of Salem, Oregon, was disincorporated and dissolved according to the laws of Oregon, on

the seventh day of April, 1870, and does not now exist as a corporation or company under the laws of this State.

Respectfully yours,

I. R. Moores, Pres, O. C. R. R. Co. of Salem,
Geo. E. Cole, Secy. O. C. R. R. Co. of Salem.

To Hon. J. D. Cox,
Secy. Dept. Interior,
Washington, D. C."

Also letter signed by George H. Williams, addressed to Honorable J. D. Cox, Secretary Department of the Interior, Washington, D. C., dated September 21, 1870:

"Portland, Oregon, Sept. 21st, 1870.

Sir:

J. Gaston, Secy of the Oregon Central R. R. Company, has handed me your letter of August 2, 1870, addressed to him as the President of said company, in which you state that the 'assent' offered by said company, to the provisions of an Act of Congress entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon,' approved May 4, 1870, will be accepted as a sufficient 'Assent' to said Act, if it be shown that the company which Mr. Gaston represents is 'the Company for whose benefit the said grant was made.' I can state of my own knowledge that the company of which Mr. Gaston was formerly President, and of which he is now Secy, is the corporation entitled to the benefits of said Act, and for which it was passed.

The *East Side* Oregon Central R. R. Co. was regularly disincorporated and dissolved by voluntary action of its stockholders, before the above named Act of Congress became a law; and the company which Mr. Gaston represents is now the only corporation under its name in this State.

Respectfully yours,

Geo. H. Williams,

Hon. J. D. Cox,
Secy. Dept. of Interior,
Washington, D. C."

Also letter signed by J. Gaston as Secretary O. C. R. R. Co., addressed to Honorable J. D. Cox, Secretary Department of Interior, Washington, D. C., dated September 21, 1870:

Portland, Oregon, Sept. 21st, 1870.

Sir:

Enclosed please find certain documents, which please place on file, with the 'Assent' heretofore sent you on the 18th of July, 1870.

I am directed to notify you that the Oregon Central Railroad Company and their assignee, The Willamette Valley Railroad Company, objects and protests against the withdrawal of any public lands for the Northern Pacific Railroad Company on their line between Portland, Oregon, or Vancouver, W. T., and Puget Sound, until such reasonable time as the two first named companies can file their maps on their line between Portland and Astoria, Oregon; for the reason, that the land

Grants of these several companies, on these lines, w
overlap, each other, and the grant of the first nam
companies being prior in time, is prior in right.

Respectfully yours,

J. Gaston,
Sec. O. C. R. R.

Hon. J. D. Cox,
Secy. Dept. Interior,
Washington, D. C."

Whereupon the defendants objected to the admi
sibility of each of said documents and to the whole ther
of, as immaterial and irrelevant.

Whereupon complainant rested its case in chief.

TESTIMONY FOR DEFENDANTS.

Defendants proceeded to offer testimony in the
behalf.

Whereupon B. A. McALLASTER, called as a wi
ness on behalf of defendants, being first duly sworn, upo
direct examination testified that he resides at Oaklan
California, and is Land Commissioner of the Orego
and California Railroad Company, Land Commission
of the Central Pacific Railway Company, Southern P
cific Railroad Company, and Southern Pacific Lan
Company, and was appointed by the Board of Directo
of the Oregon and California Railroad Company i
Land Commissioner September 28, 1908, effective Sep
tember 21, 1908.

Whereupon witness produced a certified copy of th

resolution of said Board of Directors, which was offered received in evidence marked "Defendants' Exhibit 251," and is hereinafter set out and described and made a part of this statement of the evidence, identified herein as "Defendants Exhibit 251."

Whereupon witness produced a copy of his appointment by the Board of Directors of the Central Pacific Railway Company as its Land Commissioner, which was offered and received in evidence and marked "Defendants Exhibit 252," and is hereinafter set out and described and made a part of this statement of evidence, identified as "Defendants Exhibit 252."

Whereupon witness further testified that he was appointed Land Commissioner of the Central Pacific Railway Company on September 26, 1908 as of date September 21, 1908, and was appointed Land Commissioner of the Southern Pacific Railroad Company by the Board of Directors September 23, 1908, effective September 21, 1908. Whereupon defendants offered in evidence the minute book of the Oregon and California Railroad Company, the minute book of the Central Pacific Railway Company, and the minute book of the Southern Pacific Railroad Company, showing the adoption of these various resolutions, and asked leave to withdraw same and substitute copies thereof marked as heretofore. Whereupon the resolution of the Board of Directors of Southern Pacific Railroad Company was marked and identified as "Defendants Exhibit 253," which is hereinafter set out and described and made a part of this statement of the evidence, identified herein as "Defendants Exhibit 253."

STIPULATION.

Whereupon it was agreed between the parties that the Southern Pacific Railroad Company is the Southern Pacific Railroad Company of California, and not the defendant Southern Pacific Company, and the so-called Southern Pacific Railroad Company is the company that was consolidated pursuant to the laws of the State of California, the constituent companies consisting of the former Southern Pacific Railroad Company of California and corporations bearing the same corporate name organized under the laws of Arizona and New Mexico.

Whereupon witness further testified that he first entered the land department of the Union Pacific Railway Company, in the branch office at Kansas City, in December, 1882, as a clerk; that office then handling what were formerly land grants of the Kansas Pacific Railway Company, extending from Kansas City to Denver, Colorado, and the land grant of the Denver Pacific Railway and Telegraph Company, extending from Denver, Colorado, to Cheyenne, Wyoming. In 1887 that Kansas City office was consolidated with the Omaha office of the Union Pacific Railway Company, which office had previously handled the Union Pacific land grant from Omaha, Nebraska, to Ogden, Utah, and at that time he was made chief clerk of the consolidated office. In May, 1890, he was appointed land commissioner of the consolidated office, and retained that position until September 21, 1908, and was land commissioner of the Union Pacific Land Department from 1890 to 1908;

from 1882 to 1887 he occupied various desks in the office, and then in 1887 was made chief clerk of the consolidated office and had general charge of the entire office under the then land commissioner, and after his appointment as land commissioner, he had the administration of the land grants of the Union Pacific, Kansas Pacific and Denver Pacific companies, leasing lands, selling lands, appraising them, acquiring patents, and attending to all the duties pertaining to the land department. He was appointed by the executive committee of the Southern Pacific Company as land commissioner on or about the 8th of October, 1908, to take care of certain lots which that company owned in the towns of Russell City, Alameda County, California; Mina, Esmeralda County, Nevada, and Imlay, Humboldt County, Nevada. Whereupon defendants offered in evidence the instrument evidencing the appointment of witness as land commissioner of the Southern Pacific Company for the purposes stated by him, and asked leave to read the same into the records as "Defendants Exhibit 254," which said "Defendants Exhibit 254" is hereinafter set out and described and made a part of this statement of the evidence and identified herein as "Defendants Exhibit 254." The Southern Pacific Company never has had a land department, within his knowledge. From 1882 to 1887 the Kansas City land office had charge of the Kansas Pacific land grant from Kansas City, Missouri, to Denver, Colorado, and the Denver Pacific Railway and Telegraph Company's land grant from Denver, Colorado, to Cheyenne, Wyoming. From 1887

to 1908 the consolidated office at Omaha cared for those two grants, and also the Union Pacific Railway Company grant from Omaha, Nebraska, to Ogden, Utah. The dates of the Acts of Congress making these grants to the Union Pacific and Central Pacific Railway from the Missouri River to the Pacific Ocean were July 1, 1862 and the amendatory acts of July 2, 1864.

The jurisdiction of the Central Pacific Railway Company in relation to its land grant, territorially, was from Ogden, Utah, to Sacramento, California, under the acts of 1862 and 1864, and from Roseville Junction, California, to the north line of the State of California under the act of July 25, 1866. The Central Pacific grant originally ran through to San Jose, but that grant was disposed of. The Central Pacific does not own it now from Sacramento to San Jose; the railroad between Sacramento and San Jose came back to the Central Pacific, but not the land.

The Southern Pacific Railroad Company held the grant from San Jose to Tres Pinos in California, and from Alcalde to Needles in California under the act of Congress approved July 27, 1866, and branch line grant from Mojave to a point near Yuma, Arizona, under the Act of Congress approved March 3, 1871.

The Central Pacific Railway Company now owns that portion of the grant in the State of California made to the California and Oregon Railroad Company under the act of July 25, 1866. As Land Commissioner he

has jurisdiction over that portion of the grant of July 25, 1866 made to the California and Oregon Railroad Company, now owned by the Central Pacific Railway Company in California, and also the grant of land owned by the Southern Pacific Railroad Company, and also that portion of the grant of July 25, 1866 in Oregon now owned by the Oregon and California Railroad Company, and such jurisdiction also covers the unsold portion of the grant of May 4, 1870 owned by the Oregon and California Railroad Company. As Land Commissioner he keeps records showing the boundaries of the various grants; plats showing the location of the lands granted to the company and also those lost to the grant; records showing the applications filed by the company for patents; the issuance of patents; any and all contests or hearings in the land offices relating to the right of the company to receive patents for certain or any lands; records of the field examinations of the lands, of their appraisal, and the character and topography of the lands; records of sales made by contract or for cash; records of deeds made, and various and sundry other records necessary to know what is acquired, how disposed of, and what is left. He has a fairly complete set of the plats of the United States surveys, and copies of field notes to an extent, but not complete. The companies have tract books showing in a condensed way the various conditions of title, etc., although these are not now in use. The companies substituted for that a card record as to lands that had not been disposed of prior to the institution of the card record system. The card records

do not show all the lands, because cards were not made for those lands which had been sold and deeded by the company prior to the time when the card record was instituted. Otherwise than that, they do show all of the land owned by the company or claimed by it. The tract books show the rest up to that time. The companies have reports showing the topography and character of the lands, occupancy of them, the values as estimated by the field agent who makes the examination. Those values are not always treated as being the market values. It is absolutely necessary that these various records, reports, etc., be kept full and complete and correct. Otherwise the companies could not handle the land grants at all.

In the execution of land sales, the companies use generally a deed which grants and conveys the land, and these forms are substantially the same as to each land grant. In cases where the companies may sell a piece of land for which patent has not yet been received by the company, or where there may be some occupancy that the companies would prefer to recognize the occupant and deal with him on a quitclaim deed rather than first dispossess him in order to put it where the companies could handle the tract with a grant and convey deed, the Companies use quitclaims for conveyances. There are very few quitclaim deeds used. They use quitclaim deeds where a former deed has ben lost by the grantee, who seeks a deed of further assurance, or a deed from the company to replace a lost deed that has not been recorded. He has three forms of Central Pa-

cific deed. Form No. 3332 has been in use heretofore, but is not now used. Form 4501 is for the conveyance of land in which there is no right of way to be reserved for the railroad, and Form 4502 is the form in which rights of way are reserved, and these two forms are the ones customarily used at the present time to convey Central Pacific lands. Deeds of the other companies are similar in form. These forms 3332, 4501 and 4502 are not used for conveying Oregon and California Railroad Company lands, but they are substantially the same.

Whereupon defendants offered in evidence Forms 3332, 4501 and 4502, which were received in evidence as "Defendants Exhibit 255," which is hereinafter set out and described, made a part of this statement of the evidence and so identified herein.

Whereupon witness further testified that Form 3332 is one used when the company has occasion to convey a tract of land that is unpatented but the company claims that it is entitled to a patent but has not yet received it, and that is the reason that form is used. Form 4501 is used for any patented land through which it is not necessary to reserve rights of way for the railroad, but occasionally it is necessary to include some special exceptions in particular cases, and for this there is a blank space left for such exceptions. Form 4502 is used in conveying lands through which it is necessary to reserve rights of way for the railroad. He had made no sales since his appointment as Land Commissioner of the Oregon and California Railroad Company of any conse-

quence, and the only deeds that have been executed, with certain exceptions to be mentioned later, were deeds made in completion of contracts outstanding prior to the institution of this suit, that is to say, where there were executory contracts upon which partial payments had been made, which were in effect, where parties were entitled to their deeds on payment of the balance of the purchase price as they matured,—and in such cases the company has performed by executing the deeds called for by these contracts. Since this suit was instituted in September, 1908, there has been made a sale, in October, 1908, to the City of Sheridan of forty acres, as to which the City of Sheridan had previously instituted proceedings to condemn the tract for water supply, and the purchase price for this tract was $10.00 per acre,—$400.00. In December, 1908, a sale was made of 160 acres, at $2.50 per acre,—$400.00, to Franklin Martin, in settlement of a suit which Martin had brought some time before. This suit was not brought pursuant to any claim that he had a right to it at the $2.50 per acre under this statute. In December, 1910, the company sold a right of way to the Salem, Falls City and Western Railway Company, 3.20 acres at $15.62 per acre, total $50.00, pursuant to condemnation proceedings which had been instituted by that company. In May, 1912, the company sold to the Oregon Electric Railway Company a right of way, 2.60 acres, for $500.00, pursuant to condemnation proceedings. In January, 1910, the company sold a right of way to the Portland Southwestern Railway Company, number of acres not stated, total consid-

eration $1220.80. That was also pursuant to condemnation proceedings. In June, 1910, the company sold to Roy W. Minkler 80 acres at $22.50 per acre—$1,800.00, and that sale was in settlement and compromise of a suit brought by Roy W. Minkler, one of the defendants in this suit. With the exceptions noted, no sales of Oregon and California Railroad Company lands have been initiated or consummated by him as Land Commissioner since his appointment or since the commencement of this suit.

The form of deed which the Oregon and California Railroad Company has been using in the consummation of the executory contracts for land that were contracted to be sold prior to the commencement of this suit, is Form No. 3398, which is regularly executed by the Vice President and Secretary of the Oregon and California Railroad Company, and where they are trust lands, joined by the Union Trust Company. Whereupon defendants offered in evidence said Form 3398, which was received and marked "Defendants Exhibit 256," which is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Q. Now, I wish you would state, if you know, what the policy of the land department of the various companies that you have represented in the past, and that you now represent, has been in respect to promotion of settlement of any of these lands that are subject to or capable of settlement? What do you know about that?

Mr. Townsend: That is objected to, on the ground that it is immaterial and irrelevant, and particularly in view of the testimony of the witness that his personal knowledge as to the Oregon and California Railroad land grant is limited to the period commencing September 21, 1908, during which entire period the pleadings admit that all lands of the Oregon and California Railroad Company have been withdrawn from sale, and therefore this witness can have no personal knowledge as to the policy of the Oregon and California Railroad Company, and the testimony is therefore incompetent and hearsay.

A. The policy of the Union Pacific Railway Company was always to induce settlement by every means possible, for the reason that settlement means building up the country and traffic for the road. The policy of the Central Pacific Railway Company and of the Southern Pacific Railroad Company since my appointment has been along the same lines.

Q. What would have been the policy of the Oregon and California Railroad Company as to that class of lands but for the institution of this suit, if you know?

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness as to what would have been the policy, instead of evidence as to the actual policy of the company.

A. The policy would have been to have offered the lands for sale, had it not been for the fact that this

suit had been instituted before I took hold of the department.

Q. And in making these offers of sale, what would have been the policy of the company as to inducement to promote settlement as to lands that were capable of settlement, if you know?

Same objection.

A. Well, the principal inducement that we offer is a long-time contract.

Q. What I mean is, would you have offered any inducements to promote the settlement of any of these lands that are capable of settlement, if you had the opportunity to sell?

Mr. Townsend: Same objection; and upon the further ground that it permits to the witness his own opinion as to what lands are capable of settlement.

A. Well, the efforts of the department are mainly directed to securing settlers.

Q. Is or is not this a policy which these land-grant roads have pursued from the beginning of your connection with them, and continued up to the present time wherever possible?

A. It has always been the policy to sell the lands to people who would settle on them and improve them.

Whereupon the witness further testified that he had prepared or caused to be prepared a tabular statement

for each county in which some portion of the lands of the so-called East Side and West Side grants are situated, showing the record of deeds or contracts, selling or for the sale of the lands of the Oregon and California Railroad Company, which tabulated statement was prepared under his direction and supervision, and is an accurate transcript of these records. Whereupon witness produced the tabulated statement for inspection, and further testified that this tabulated statement had been checked up and found to be correct according to the recorded instruments, with the character of the instrument, the date, the name of the grantee, the description of the lands, and consideration stated, and the book and page of the various records. They show that information correctly, and in the conduct of his office these documents are relied upon by him as correct and as correctly stating the facts therein collated. Whereupon defendants offered in evidence said tabulated statements for Columbia, Washington, Multnomah, Tillamook, Yamhill, Polk, Marion, Lincoln, Linn, Lane, Douglas, Clackamas, Coos, Josephine, Curry, Jackson, and Klamath Counties, Oregon, and Clarke County Washington, which was marked collectively "Defendants Exhibit 257," which "defendants Exhibit 257" is hereinafter set out and described and made a part of this statement of the evidence, and identified herein as such.

Explaining how these documents were tabulated and from what sources of information they have been obtained, witness further testified that the fire of April

1906 destroyed all of the records of the land department, and after that it became necessary to restore those records from all sources from which the information could be obtained. In so doing, individuals were sent to the various counties, or arrangements made with abstract companies who had abstracts of record, to furnish the department with complete abstracts of all deeds which had been given by the Oregon and California Railroad Company. The same arrangements were made in respect to deeds of the other companies, and not only deeds, but contracts—anything—any document of record in the county records, which had been executed by or on behalf of the Railroad Company, were ordered abstracted in that manner, and those abstracts became the company record of the deeding of lands prior to the 1906 fire, and these are compiled from those abstracts. These abstracts and examinations thus made were furnished to him as the records of his office, upon which he acted, and upon which the company relied to re-establish the records of the land department after the fire of April, 1906, and witness has these original abstracts and reports for the inspection of counsel for the Government if desired. Witness is satisfied from these abstracts and from the reports thus made and obtained, that this tabulated statement is a correct record of what it purports to be, and he, as Land Commissioner, is acting upon that record. Whereupon defendants renewed their offer of these documents so tabulated and so compiled, heretofore herein referred to as "Defendants Exhibit 257."

Whereupon Counsel for Complainant interrogated

the witness, who further testified that he first came to San Francisco to take charge of the land department of the Oregon and California Railroad Company, together with these other companies mentioned by him, September 21, 1908, and prior to that time he had had nothing whatever to do with the land department of the Oregon and California Railroad Company, although he had inspected somewhat the records of the land department of the Oregon and California Railroad Company in May 1907. May, 1907, was the first time he saw any of the records of the land department of the Oregon and California Railroad Company, from which he compiled "Defendants Exhibit 257," and his knowledge as to the manner in which they were obtained is what he had to learn in order to carry on the office. He had nothing to do personally with the procuring of these records, and his knowledge was from what he learned in the office, and not from his personal contact with the transaction, as witness said he found the records in the office, and as to the manner in which they were obtained his knowledge was limited to what he had ascertained from the employees of the office, or otherwise, since he became connected with it.

Mr. Townsend: Now, the Government objects to the introduction of this Exhibit 257, on the ground that it is incompetent and hearsay, and no foundation has been laid.

Mr. Fenton: I was going to say that counsel for the Government, unless he withdraws this objection, puts us to the expense and necessity of calling the county

recorder of each of these counties to check up personally these lists; and if he can satisfy himself that they are correct, I should be glad to have him do so, and save us that expense and delay.

Mr. Townsend: In response to that, I will state in the record, that I have no present reason to doubt the accuracy of these statements, but, in view of the manner in which they have been vouched for, not intending to challenge the good faith of the witness, still I do not feel justified in consenting that they be received in evidence at this time. However, if I can satisfy myself that they are correct in fact, the objection as to the manner of identifying the county records will not be urged as an objection.

Mr. Fenton: Very well. I will ask leave to withdraw these, and have the recorder and clerk put in the date of the record of each one of these documents in a column on the margin of them, and then return them to the files.

Mr. Singer: And certify to it.

Mr. Fenton: I will offer them for the present with that promise, and ask leave to withdraw them from the examiner for that purpose.

Mr. Townsend: The Government consents to the withdrawal of these documents for the purpose stated, reserving the right to either renew or waive its objection when the documents shall be reoffered as proposed.

Mr. Fenton: That will be all right. I would like

to have it understood, Mr. Townsend, that all these records and files referred to by Mr. McAllaster are subject to your inspection, and tendered to you for that purpose, if you should desire at any time to do so.

Mr. Townsend: I will not attempt to avail myself of that privilege at this time, but will indicate later to the witness any records that I desire to inspect.

Received and marked as "Defendants Exhibit 257," and withdrawn as agreed.

Whereupon witness further testified that he, as Land Commissioner of the Oregon and California Railroad Company, has in his possession certain records required to be kept by him in the administration of these two grants, known as the East Side and West Side grants, and had prepared a typewritten statement of the results shown by the tract books and cards referred to by him, as to the status of all lands within the limits of the East Side grant, so-called, and a similar statement of all lands within the limits of the West Side grant, so-called, as of May 1, 1912, showing the total quantities lost by or on account of other grants, entries, etc., with the particulars, the total quantities realized, with the particulars, and the total deficiencies of each grant, and the causes thereof, which the witness then produced, and the same was identified and marked "Defendants Exhibit 258." Whereupon witness testified that "Defendants Exhibit 258" correctly states the status as of date May 1, 1912, of that part of the grant situated in Oregon made by

Act of Congress approved July 25, 1866, and also the status as of date May 1, 1912, of the grant made by Act of Congress approved May 4, 1870. Whereupon counsel for Complainant reserved the right to object to the introduction of said document, after cross examination of the witness. Whereupon, the same was received and marked "Defendants Exhibit 258," which is hereinafter set out and described, and made a part of this statement of the evidence, and identified herein as such.

Whereupon witness further testified, in explanation of the figures representing the acres stated on Defendants Exhibit 258, that the information is contained in the company's land office records, and was obtained from examination of the General Land Office records and United States Local Land Office records, and this "Defendants Exhibit 258" correctly states, as shown by the company's land department records, and as shown by the records of the General Land Office and the United States Local Land Offices, the facts upon which this exhibit is based. These figures and notations explaining the figures are relied upon by him as correct in the administration of these grants. He has prepared a map showing the results disclosed by the records of the land department in his custody, as to the primary and indemnity lands of the so-called East Side and West Side grants, showing in colors lands patented to the company, granted or available under the grants but not patented, lost to the grants by other disposition made by the United States, and disposed of by the company. This map was prepared under his direction and super-

vision, and the information on which it was prepared is based upon the records of his office, and as in the case of the statement just presented, is based on information taken from the General Land Office and local land offices of the United States. He believes the map to be absolutely correct, and he, as Land Commissioner of the Oregon and California Railroad Company, acts upon it and relies upon its verity. Whereupon witness produced said map, and the same was received in evidence as "Defendants Exhibit 259," which is hereinafter set out and described, and made a part of this statement of the evidence, and identified herein as such.

In explanation of that map and the legends thereon, the witness says that the interior red lines on the map indicate the 20-mile or primary limits of the grant of July 25, 1866 on either side. The exterior red lines indicate the indemnity limits—the 30-mile limits on each side. The green interior lines up at the top of the map indicate the 20-mile limits of the grant of May 4, 1870, and the exterior green lines indicate the outer five-mile limits, or indemnity limits of the same grant. The green coloring on the sections indicates the patented and unpatented unsold lands of both grants, not including unselected indemnity lands. The sections colored carmine are lands covered by outstanding contracts of sale. The sections colored blue are those lands which have been deeded by the grantee companies. The sections colored yellow are lands lost to both grants by adverse entries. The sections colored brown are lands unavailable for in-

demnity selection because within forest or other reserves established subsequent to the grant. The sections enclosed within green lines are unselected indemnity, including pending suspended lists and unsurveyed lands. In other words, they are indemnity lands that either have not been selected or are in pending selection lists. The large body of land in yellow from Portland south to about Creswell, Lane County, Oregon, both within the place and indemnity limits of the grant of July 25, 1866, indicates lands which were lost to the grant by reason of entries or other disposals made by the United States before these grants became operative. The most of the losses came under the Donation acts and the Settlement acts in that territory. There were other causes of loss. To a very large extent these parcels marked in yellow are lands which were occupied or taken under the Donation or Settlement laws in the early settlement of Western and Southern Oregon, as ascertained by witness from his knowledge of the township plats and records in the General Land Office and in the United States Local Land Offices, obtained in various ways, and particularly in compiling this map. To a large extent, the lands indicated by a large valley in yellow, or a body of land in yellow indicated on this map, of which Roseburg, Douglas County, on the Umpqua River, is substantially the center, were lost by donation claims and homestead entries. That body of land also includes the Roseburg and Coos Bay Wagon Road grant, which was lost because the United States erroneously patented them under the wagon road grant instead of holding

them for the railroad grant, to which they properly belonged.

Whereupon, counsel for complainant objected to the testimony of witness last above, as to whether the United States erroneously patented these lands, as incompetent, irrelevant and immaterial, and a mere conclusion of law and fact by witness.

Whereupon witness further testified that it was a fact that these lands were lost to the Oregon and California Railroad Company and were granted or patented to the Wagon Road Company, and it is true that these lands in and about Roseburg, Douglas County, Oregon, that were taken under the Donation Land Laws, were settled, as witness understood, in the early settlement, and are largely in the agricultural portion of Douglas County. The lands indicated by the body of yellow surrounding the town of Medford, in Jackson County, are agricultural, and were lost to the company under the Donation Land Law and other settlement laws, long prior to the grant of July 25, 1866. That constitutes part of the Rogue River Valley, of which Medford is the central town. This yellow, all through on this map, shows lands that are situated in the valleys of Western Oregon, and which are chiefly in the agricultural portions thereof, to which counsel for complainant objected as incompetent, irrelevant and immaterial.

Whereupon witness further testified that he had been through these lands on the train and particularly observed that in certain localities lands in sight from the

train were agricultural lands, and were being cultivated, and he would not dispute that the Willamette Valley is situated largely where that large body of yellow shown on this map is located, for it is a fact that the Willamette Valley is so situated. The Umpqua Valley is situated in and about Roseburg, as shown on the map. The Rogue River Valley is situated in and about Medford. He has prepared another map of the unsold lands involved in this suit, showing as a result from the records of the company, the timbered and non-timbered lands of these grants, the topography of the country in which they are situated, and generally the character of these lands, which was marked as "Defendants Exhibit 260." The information indicating the different classes of lands indicated by the green and yellow coloring on the map, was obtained from the records of his office, based on General Land Office and United States local Land Office records. The information as to topography, streams, mountain ranges, etc., was taken from the plats in the office of the Surveyor General of the United States for Oregon. As a sample report showing information as to the topography, timbered character or non-timbered character, or other information for use in his office, used by him in connection with the field notes of the Surveyor General's office and the United States Land Office records, in the preparation of this map, witness says there are six original reports of field examination of lands which show the information required. He has all of the original reports in his office, of which this bunch of six is a sample, and they are all prepared in the same way

under his direction by his employees and representatives, for the files of his office, and largely all on the same printed forms, although there have been different forms in use at different times. These reports are required by him to be made in the administration of the grant, and the Company acts upon and relies upon them and they are part of the files of his office as Land Commissioner.

Q. For the guidance of yourself as Land Commissioner, and in the administration of the land grant, is there any other way to obtain accurately the information contained in these reports, excepting in the way these have been obtained?

Mr. Townsend: Objected to as incompetent, irrelevant, immaterial, a mere conclusion, and argumentative.

Q. I mean, any other practicable way?

A. No, sir.

Q. As Land Commission, in your experience with the various land grant companies to which you have referred and about which you have testified, is this the usual and ordinary way to obtain the information desired?

Same objection.

A. Yes, sir.

Q. As a man experienced in the operation and administration of land grants, and in ascertaining the value, the physical characteristics, situation, location, topog-

raphy and timber contents, have these reports been obtained in the usual and ordinary way by you as an expert, in the conduct and management of these particular land grants?

Mr. Townsend: Objected to upon the same ground.

A. Yes, sir.

Q. Are you prepared to say, from these records, reports, and the records of the United States Land Office, and the records of the Surveyor General's office, that this map—Defendants' Exhibit 260—correctly represents what it purports to represent?

Mr. Townsend: That is objected to on the ground that it is incompetent, irrelevant and immaterial; that it is based entirely upon hearsay and self-serving declarations made by the officers and agents of the railroad company; that the witness has not qualified himself to testify as to the character of the lands included within this grant, and that his testimony is necessarily hearsay and incompetent; and upon the further ground that the so-called classification of these lands is a mere arbitrary classification, and does not describe the lands with reference to any issue involved in this case; and upon the further general ground that it is immaterial in this case whether the lands are timbered lands, agricultural lands, or what their character may be.

A. Yes, sir, it does.

Mr. Fenton: Defendants now offer these six sample

reports as a physical illustration of the method pursued by the Land Commissioner, and as part of the files of his office, and ask to have the same marked as "Defendants' Exhibit 261." I now tender to the Government's counsel all the records and files of the office of the witness, particularly all of the original reports of which Defendants' Exhibit 261 is a sample, which is received in evidence and marked Defendants' Exhibit 261, and is hereinafter set out and described and made a part of this statement of the evidence, identified herein as such.

Mr. Townsend: Government objects to the introduction of Defendants' Exhibit 261, upon the same general grounds last stated, and upon the further specific ground that this is an attempt to prove the character of two million three hundred thousand acres of land by exhibiting unidentified reports and thus denying to the Government the opportunity to cross-examine the men who claimed to have made an examination of these lands, and upon whose alleged examination of the lands it is now sought to establish the character of the lands; the evidence is therefore incompetent and hearsay; and the evidence is further incompetent and hearsay to prove the contents of other reports made by the land examiners of this railroad company.

As to the offer by the counsel for defendants to the attorneys for the Government that the records of the office of the witness may be inspected, counsel for the government further objects, upon the ground that such an offer is obviously impracticable, and furnishes the

Government no opportunity whatever to test these records, it being obvious from the testimony of the witness that it has required a large force of officers and agents of the railroad company to compile the information which they themselves now offer, and it is impossible for the Government attorneys to inspect these records and verify the accuracy of the hearsay evidence now offered; and moreover there is no legal authority for an attempt to prove these facts in any such manner.

Q. Please, state, Mr. McAllaster, the names of your field examiners and their residences, so that counsel for the Government may know who they are, who made these reports.

A. Mr. A. W. Rees, Portland, Oregon. He is our chief field examiner for that district, and in charge of the work, and does a great deal of it himself. He has as his assistants Mr. L. D. McLeod, S. C. Bruce, D. C. McLennan, J. C. Rogers, Alexander Wilkinson, Elmer Capell. Those men constitute our present force of examiners in Oregon.

Q. Are these the names of all who made reports of field examinations of these lands, that were and are a part of the files of your office, on which any part of this map Defendants' Exhibit 260 is based?

A. No, we have had other men in that kind of work, who are not now with the Company.

Q. Can you give me their names, and their residences, if you know?

A. S. A. Carmichael, C. A. Cavel, F. A. Elliott, Ben Irwin, Roy Woods. That is all of which I have a record at hand. There may have been others.

Q. Who was or is Mr. F. A. Elliott? What position does he hold at the present time?

A. He is State Forester—I think is his title—of Oregon. He has charge of the forestry work carried on by the state.

Q. His offices are at Salem, Oregon, are they?

A. Yes, sir.

Whereupon witness further testified that he had prepared a statement showing the number of acres of land in each county in Oregon and Washington involved in suit 3340, being the suit now on trial, United States vs. Oregon and California Railroad Company et al., showing the number of acres which had been covered by the Oregon and California Railroad Company's field examinations, and the classification thereof as determined from such examinations, as shown by these reports, whereupon witness produced that table or statement identified as Defendants' Exhibit 262, and testified that it is a correct statement. Whereupon defendants offered the same in evidence, to which counsel for complainant objected upon the same grounds as hereinbefore set out, and it was agreed that such objections may be considered as here set forth in full. Which said Defendants' Exhibit 262 was received in evidence and is herinafter set out and described, and made a part of this statement of the

evidence, and identified herein as such. This Defendant's Exhibit 262 purports to show that the total acres involved in this suit are 2,075,616.45 acres, of which there has been examined 847,795.98 acres up to the date stated, and that this is forty per cent of the entire grant. These figures are correct. It purports to show that seventy-eight per cent of the area examined is timber land, and this is correct according to these reports. Whereupon it was stipulated that all testimony as to the details of Defendants Exhibit 262, including the preceding testimony and all similar testimony that may follow, shall be received subject to the objections heretofore assigned by complainant.

Whereupon witness further testified that the table or statement showing that nineteen per cent of the area examined was grazing land is correct according to these reports, and that two per cent of the area examined is agricultural land, and is correct according to these reports.

Whereupon defendants offered in evidence the map heretofore identified as "Defendants' Exhibit 260," and the same was received in evidence and marked "Defendants' Exhibit 260," which said Defendants' Exhibit 260 is hereinafter set out and described and made a part of this statement of the evidence, and identified herein as such, to which complainant objected upon the same general grounds heretofore assigned as to any evidence based upon the reports of the so-called land examiners of the railroad company and other sources of information

related by the witness, it being stipulated that these
jections may be considered as having been made
set forth in full.

Whereupon witness further testified that as I
Commissioner of the Oregon & California Railroad C
pany, he had prepared a third map showing the un
lands of both grants and illustrating in colors the
position made by the United States of intermediate
sections, which he produces for the purpose of iden
cation and which is marked "Defendants' Exhibit 2
This map was made upon information, records and
in his office and is a correct map. The green colo
indicates the lands of the Oregon & California Railr
Company involved in this suit; the lands colored g
without other marking being patented lands; those
ored green with a red circle are unpatented lands
volved in this suit; and those colored green with b
circle are unsurveyed lands involved in the suit.
red coloring indicates lands not involved in the
which were taken up as public lands of the United St
under settlement entries. The lands colored yellow
those taken up as public lands of the United States u
non-settlement entries. The homestead entry law
principally availed of to obtain the settlement ent
indicated in red; the timber and stone law principall
obtain the lands indicated as non-settlement entrie
yellow, and some to general entries and cash ent
The timber and stone act of 1878 included the Stat
Oregon, but he does not remember what other Pa
Coast States or Territories it embraced, or whethe

was limited to Oregon, California, Nevada and Washington. The information as to the Company's own lands was obtained from its own records made up as heretofore explained. The information as to the even numbered sections was obtained by examination or the records of the United States Local Land Office and abstracted from them.

Whereupon defendants offered in evidence "Defendants' Exhibit 263" to which counsel for complainant objected, upon the general grounds heretofore stated and particularly upon the ground that no foundation has been laid for the testimony of this witness, as to the accuracy of the map, and it appears from such testimony that the map is compiled from information furnished to the witness, or his office, by others, and there is no testimony vouching for the accuracy of the details from which the map is compiled.

Whereupon said "Defendants' Exhibit 263" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Defendants' Exhibit 263."

Whereupon witness further testified that the information from which "Defendants' Exhibit 263" is compiled is all of record in his office and part of the records of the office and the Company relies upon the map as being correct. Referring to rough township plats prepared by him, showing disposition by entrymen of the portions of even sections marked "Defendants' Exhibit

264" he testifies that this set of plats was compiled from abstract made by employes of the Department from the United States Local Land Office records in Oregon, from the County records of the sundry Counties in Oregon, and from examinations made of the lands themselves and it is a correct showing of the facts therein indicated.

Certain of the settlement entries, which were entries made under the Donation claims law, Homestead law, Pre-emption law, and like laws, were not examined —that is, the lands were not examined in the field—and those tracts are marked by the letters "P" indicating preemption, "H" indicating homestead, "D" indicating Donation claims. Other lands, taken under like settlement entries, were examined in the field, and the green coloring indicates grazing lands now owned by the entrymen, but not occupied. Green coloring with the black "T" indicates grazing lands owned by transferee from the entryman, but not occupied. Green coloring with the letter "E" indicates grazing lands occupied by the entryman. Green coloring with the letter "O" indicates grazing land occupied by a transferee from the entryman. The red coloring indicates timber lands owned by the entryman, but not occupied. Red coloring with the letter "T" indicates timber land owned by a transferee from the entryman, but not occupied. Red coloring with the letter "E" indicates timber land occupied by the entryman. Red coloring with the letter "O" indicates timber land occupied by transferee from the entryman. Under the head of "Non-settlement

Entries" are shown those lands which have been taken by any form of entry under a public land law which does not require settlement as part of the acquirement of title. Lands covered by these entries were not examined in the field. The blue coloring with the letter "E" indicates timber entries owned by the entrymen. The blue coloring without any letter indicates timber entries owned by transferees from the entrymen. The yellow coloring indicates lands entered by scrip, and now owned by timber companies. The yellow coloring with the letter "S" indicates lands entered by scrip, and now owned in small holdings. Uncolored lands marked with letter "C" were cash entries. Those marked with letter "M" were mineral entries. Those marked with the letter "I" were Indian allotments. Those marked with the letters "Is." were isolated tract patents. And those marked "Coal" were coal entries. These colors in "Defendants' Exhibit 264" are not intended to have any relation to the colors on these maps. It is a separate color scheme used in these plats. Roy Woods, whose name appears on the first seven townships of this "Defendants' Exhibit 264" was one of his employes as a field agent who examined lands in the field. The coloring indications, so far as land examinations go are based on his reports. W. E. Stuart, whose name is mentioned on this Exhibit was an employe of the Department and did all the work of coloring and lettering of these plats. He compiled the information from the records made by abstractors and examiners. J. H. Ray was one of the employes of the Department engaged in gathering the

information. He was a field man. Edmond Stowe was one of the field men engaged on that work. Ivan Hawkins was one of the men engaged. Kendall, whose name appears on certain of these sheets was one of the men engaged on the work. Kinser, Kemptoy, G. E. Cartier, E. and W. J. Lander, L. M. Stonebreaker, C. L. Knox, Lynch, Olinger, White, Boehmer, Beekman, Eberspacher, Rodolf, Williams, Lake, Coppock, Landers, O'Shea, Lyman, Ashford and Look, were field agents employed by the Department to make this examination and reports. They made, respectively, written reports from field examinations and delivered them to him, and based upon these reports and upon the examination of the Local Land Office records, and the County Records, where the deeds are recorded and other records, all sources of information obtainable by him, this "Defendants' Exhibit 264," with the showing as stated, was prepared and brought to date (about May 12, 1912).

Whereupon defendants offered in evidence said document "Defendants' Exhibit 264," reserving the right to call any or all of these field men to testify further in reference thereto if Governments counsel shall not be satisfied, on investigation, that it is substantially accurate.

Whereupon counsel for the Government objected to the introduction of said exhibit upon the general grounds heretofore assigned as to compilations attempted to be identified by the witness, including the ground

that the same is incompetent, irrelevant and immaterial, based upon hearsay, and no foundation has been laid for the testimony of the witness as to the accuracy either of the compilation itself or to the materials from which the exhibit is compiled, which said "Defendants' Exhibit 264" is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he had certified copies of the field notes of the surveyor generals office of Oregon showing the character of the land as returned by the surveyors when the Government survey was made and these notes were a part of the information used in making up "Defendants' Exhibit 264." These certified copies have been conveniently bound in packages 1, 2 and 3 and for the purpose of identification being marked "Defendants' Exhibit 265" were produced by him.

Whereupon defendants offered in evidence said certified copies so identified as "Defendants' Exhibit 265," to which counsel for complainant objected as irrelevant, immaterial and incompetent particularly upon the ground that the character of the lands involved in this suit is immaterial under the issues.

Whereupon it was stipulated that all evidence as to the character of the lands involved in this suit, or the lands in the intermediate even sections, including "Defendants' Exhibit 264" is received subject to this same general objection.

Whereupon said "Defendants' Exhibit 265" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Witness testified that he had prepared from the records of the Company, or caused to be prepared, a map showing the elevations above sea level of stations between Roseville Junction, California, and Portland, Oregon, on the line of the located and operated road mentioned in the act of July 25, 1866, and produces the same for the purpose of identification, and the same was marked "Defendants' Exhibit 266," and in explanation of said map witness further testified that the green line shown thereon is the line of the present constructed and operated so-called West Side line (that is, from Portland by way of Forest Grove to a point at or near McMinnville) under the Act of May 4, 1870. The red line shown on the map is the line of the constructed and operated road from Portland south to Roseville Junction, known as the East Side line, constructed under the Act of July 25, 1866. These lines appear to be located on the map of the standard form of the Oregon and California Railroad Company, showing the lands granted, not only to that Company, but to the California and Oregon. It is the Company's lithographed map showing the lands which the Companies claimed. That is to say, it shows the place and indemnity limits of the grant of July 25, 1866, and of May 4, 1870, on either side of the located and constructed and operated roads indicated in green and red respectively. It shows the lands un-

sold and claimed by the Company at the time the map was printed, June 1, 1907, and it aims to and does show the exterior limits of both grants. The figures in circles along this line show the elevation in feet above sea level. The lands shown in black on this map represent the lands that were owned at the time the map was printed, June 1, 1907. No sales have been made since 1907. There have been lands deeded since, that were sold under contract, with the exception of the few instances heretofore related by him. Lands that were standing under executory contract in 1907, when this map was lithographed, in many instances, have been subsequently deeded, but this would not bear on this map. It is not a title map of the lands, or aimed to be. He has used the lithographed map of the Company and has located these railroad lines or tracks with the elevations and that is the purpose of that map.

Whereupon defendants offered and there was received in evidence said map "Defendants' Exhibit 266" which is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness produces "Defendants' Exhibit 267" and in explanation of such exhibit testifies that this picture and photograph and memoranda attached, were records of his office, found by him therein when he took charge September 21, 1908. Charles W. Eberlin was the Acting Land Agent of the Oregon & California Railroad Company and F. A. Elliott and Homer D.

Angell were employes of defendant's land department. B. A. Gifford was the photographer that took the pictures, but witness has no personal knowledge of the taking of the photographs, or the facts stated in the memoranda, merely producing them as a part of the files of his office.

Whereupon defendants offered in evidence "Defendants' Exhibit 267" under promise to call Homer D. Angell and B. A. Gifford to further identify the exhibit. Whereupon counsel for complainant objected to the introduction of said exhibit on the ground that same is incompetent, irrelevant and immaterial and that the character of the land is immaterial and irrelevant.

Whereupon said exhibit was received in evidence with the memoranda thereto attached and the same is hereinafter set out and described and made a part of this Statement of Evidence and identified herein as "Defendants' Exhibit 267."

Whereupon witness produced a photograph with certain memoranda attached dated April 15, 1912, which was marked "Defendants' Exhibit 268." Whereupon witness testified that the photograph shown in "Defendants Exhibit 268" was taken under instructions given by witness to Mr. Rees and taken by Mr. Gifford during the spring of 1912 and covers lands within the limits of the grant.

Whereupon defendants offered in evidence this exhibit with leave to verify the memoranda attached if re-

quired by complainant. Whereupon counsel for complainant made the same objection to said exhibit as to "Defendants' Exhibit 267." Whereupon the said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of Evidence and identified herein as such.

Whereupon witness produced a map marked "Defendants' Exhibit 269" and testified in relation thereto that the photograph was taken during the year 1912 under instructions given by him to A. W. Rees and the photograph was made by Mr. Gifford and shows an area lying within the limits of the land grant. There are two photographs taken from slightly different view points.

Whereupon "Defendants' Exhibit 269" was offered in evidence by defendants, with leave to call A. W. Rees and Mr. Gifford to further identify the same and the lands shown therein, to which counsel for complainant made the same objection as last above, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness produced a package of photographs, 92 in number, marked collectively as "Defendants' Exhibit 270." Whereupon witness testified that seven of these photographs were taken in the early part of 1912, under his direction, and the direct supervision of A. W. Rees, and taken by a photographer employed by Rees; that attached to each photograph is a

memorandum showing the location of the land and the names of the parties claiming the improvements shown. The remainder of the photographs were largely taken before witness took charge of the Department and he found them in his office when he came in. Attached to each photograph is a memorandum showing the location of the land and the name of the party claiming the improvements in each case and the name of the photographer who took the photograph. Some of these were taken shortly after witness came to San Francisco; that is, those that are dated subsequent to September 21, 1908, but under instructions given by his predecessors in office. They also bear similar memorandum. These lands shown in these various photographs are all lands belonging to the Oregon and California Railroad Company and involved in this suit. From his knowledge of these structures and his investigation of the matter, none of these structures were put upon these lands by the consent, permission or direction of the Company, or any representative of the Company. Most of these structures were built along about 1907 and 1908. All of these photographs, except the seven taken in 1912, are photographs of locations involved in the so-called Lafferty suits parties plaintiff who have been made defendants in this suit, or who may have intervened, or filed cross complaints. Some of these taken in 1912 were lands involved in such suits and others not. The remainder of the seven relate to improvements made by trespassers or so-called applicants to purchase these lands who have been refused. About 10,000 applications to purchase

quarter sections of timber lands belonging to the Company at $2.50 per acre have been made to the Company and refused since the commencement of the first Lafferty suit, about that time, up to July 30, 1912. These applications are made usually in this way. Some person comes in to the office with a bunch of applications, any where from 5 to 10 up to 50 or 100 and presents one application and tenders the sum of $400.00 with it and that being rejected, this person follows by presenting another application and tendering the same $400.00 and that being rejected the process is gone through with the entire bunch that the party brings in. This party is attorney or agent for the applicant, or at least claims so to be and in nearly all cases the blanks used by these so-called applicants are printed forms. He has prepared a memorandum showing the number of applications of that class up to a certain time and whether or not several persons have made application for the same quarter section. This memorandum was prepared about March 1, 1909 and shows the applications that were in his hands at that time. There were 7991 applications in his hands on March 1, 1909, covering 6168 quarter sections, or in some cases less. Occasionally an 80 acres. The entire number of applications up to July 30, 1912, would, he thinks, approximate 10,000. When this table was made up on March 1, 1909, there were 4749 tracts of land each covered by one application; there were 1097 tracks each covered by two applications; 256 tracts each covered by three applications; 54 tracts each covered by four applications; 8 tracts each covered by 5 applica-

tions and 4 tracts each covered by six applications.

Whereupon witness testified that insofar as the lands covered by these applications had been examined, he finds them to be timber lands. To which testimony counsel for complainant objected upon the ground that the testimony of witness and exhibit compiled by him with reference to the character of the lands involved in this suit in incompetent, immaterial and irrelevant, the character of the lands not being a material issue in this suit.

STIPULATION

Whereupon it was stipulated between the parties, by their respective counsel, that any and all testimony hereinbefore and hereinafter set out tending to show the character of this land, submitted by defendants, shall be deemed to be taken subject to this objection. This stipulation shall be deemed to apply to all of such testimony hereinafter set out taken on behalf of defendants and shall apply to all testimony, including exhibits hereinafter set out, taken on behalf of defendants, tending to show the character of the even intermediate sections within the limits of the grants involved in this suit.

Whereupon witness testified that the lands covered by these applications are all valuable timber lands and the best are included therein, and they are chiefly valuable at the present time for the timber. The lands will range in value from $10.00 an acre to $100.00 an acre. The value of these lands with reference to their desirability is fixed by the amount of timber measured or expressed in the number of thousand feet board measure;

that is to say, the stumpage, or the number of board feet as shown by the cruise of a timberman. The value ranges from 75c per thousand feet up to $2.00 per thousand feet stumpage for these lands and similar lands in Oregon. The variation in value between 75c per thousand feet and $2.00 per thousand feet is caused by the kind of timber, the character of the timber, its location and the logging conditions, and he had in mind by the use of the word location, accessibility to transportation by water or rail. These improvements shown in these various photographs "Defendants' Exhibit 270" are largely in what are known specifically as the Lafferty suit cases, and his recollection is that they made application in practically the same way.

Whereupon witness produced three printed blank applications filled out, which collectively were marked as "Defendants' Exhibit 271" and testified that these were a fair sample of the printed applications presented to the Company in the way he has indicated by these so-called intending purchasers. He did not, nor did anyone connected with the Company have anything to do with the preparation of these printed blanks, or authorize the use of the same. When these applications are received by mail, or presented in person, they are rejected and filed away and preserved. They have been preserved upon the advice of counsel for the Company. These applications generally contain a tender and witness thinks it occurs in all of them, to-wit:

"I herewith tender to said Company the sum of

$2.50 per acre in payment for said land," etc. When coin is produced it is merely tendered in connection with a group of applications, if more than one is presented. The same coin is used by the same person for each of the different applications. The business of land brokers that has grown up out of this controversy and which has resulted in the application of some 10,000 people to purchase these lands is co-extensive with the boundaries of the United States, perhaps including Alaska and the Islands. There are offices and men engaged in this kind of business advertising it in Omaha, Kansas City and as witness recollects in Boston and New York and many other places that he does not now recollect. These attorneys or timber locators interested, take these applications on behalf of the applicants and purport to file the applications upon lands which the County Records show free from any similar application and they charge the applicant generally about $75.00 per application, sometimes it is $50.00 and at other times it may be other amounts, but as a rule it is about $75.00 per application. That is their fee and the understanding is that the applicant will have $2.50 per acre to pay whenever this suit is determined. In many cases these attorneys or land brokers require the applicant to sign an agreement to sell the land whenever they get title at an agreed price per thousand feet of stumpage that may be on the land, usually at a price of about one-half of the market value. Whether there is any contingent fee in it, he does not know.

Whereupon defendants offered in evidence "De-

fendants' Exhibits 270 and 271" which was received and are hereinafter set out and described and made a part of this Statement of Evidence and identified as "Defendants' Exhibits 270 and 271."

Whereupon witness testified that he had seen a good many advertisements purporting to advertise for applications and applicants headed "Oregon & California Railroad Company lands" where the party did not disclose his agency but attempted to represent that he was really acting for this land grant or for the Company, but he does not recall now the particular wording in any of the cases, but as a rule they were so worded that to the ordinary reader they would appear to be published by someone authoritatively acting as agent for the Oregon & California Railroad Company. They were not authorized in any instance.

Whereupon witness produced a package of advertising blanks and forms used by these timber locators so-called, with notations of his office thereon, which collectively were marked "Defendants' Exhibit 272."

Whereupon witness further testified that some of these were clipped from newspapers, others came in with correspondence from different people making inquiry regarding the matter and asking if the facts were as there stated. The power of attorney purporting to appoint H. W. Miller of the City of Portland, State of Oregon, the true and lawful attorney for the applicant came in with some letter. Miller had no authority to act for the Oregon & California Railroad Company for him or for

any one else connected with the Company. Some or at St. Louis wrote him to ascertain something concern ing the advertisement of John M. Kreider, Suite 806- New Bank of Commerce Building, St. Louis, Mo. an that is all he knows about Kreider.

Whereupon witness, referring to a letter purportin to be signed J. M. Kreider, addressed to A. C. Edward 3863 Farnam Street, Omaha, Neb. dated July 15, 190 and the letter of witness of July 20, 1909, to Edwin H Tuttle, Traveling Passenger Agent, Union Pacif Railroad Company, St. Louis, Mo. enclosing the fo lowing clipping:

"OREGON.

OREGON TIMBER.

United States government gave 6,000,000 acr choice timber land in Oregon to railroad company 4 years ago, to be sold at $2.50 per acre; 1,300,000 acres r main unsold; now worth $50 per acre; male and fema American citizens only can now apply for 160 acres this land at $2.50 per acre; only $75 payable now. Fo full particulars address, J. M. Kreider, 806-7 New Ban Com. Bldg., St. Louis, Mo."

stated that these are a part of the advertisements an literature circulated by J. M. Kreider procured by wi ness since this question arose as to the disposition of th grant. Kreider enclosed a lithographed circular und St. Louis date July 21, 1909, purporting to be signe by St. Louis business men of standing and this accon panied these circulars. Witness does not remember th

they had any particular application from clients through John M. Kreider, although there may have been, but he did not represent the Oregon & California Railroad Company or the land department or any one connected with it.

Q. I call your attention to my letter to Mr. Eberlin, of August 9, 1907, enclosing clipping from the "Journal" and "Telegram," which clippings, for the purposes of this record, I will identify by reading them. Telegram July 18, 1907:

"FOR SALE—TIMBER LANDS.

TIMBER—

Parties wishing to make an application for some choice railroad lands, heavily timbered, cannot do better than to call at our office and get full particulars. We are prepared to locate several at this time, and our fees, including making all the papers and location, are within the reach of all.

HOWSE & MILLER,
66 Sixth St."

Also notice purporting to have been printed in the Journal of July 19, 1907, which reads:

"TIMBER.

WE ARE STILL IN A POSITION TO locate several parties on railroad lands in southern Oregon, cruising better than 4,000,000 feet per quarter section; for making tender to the company and filing papers in the clerk's office afterward, location, including all attorney fees, we charge the sum of $25. Now come and

look into this proposition, if you have never bought any lands from the company heretofore, remember this does not interfere with any of your other rights, call and get full particulars.

HOWSE & MILLER,
66 6th St.

Open evenings. Phone Main 6188."

Also:

"TIMBER LANDS.

Intending purchasers desiring to be located upon lands with heavy timber in the land grant of the Oregon & California railroad in southern Oregon can secure the same by acting quickly. Location fees including all necessary attorney's fees are reasonable. Address J. E. Verdin, Grants Pass, Or."

Did you receive, or did you find these in your files and the files of your predecessor in office?

A. Yes, sir.

Whereupon the witness further testified that he did not know Howse & Miller, or either of them, or J. E. Verdin and neither of them had any authority to act for the Company, him or the land department. The Portland Journal and Evening Telegram were printed and circulated in Portland at that time.

"TIMBER CLAIMS. The present time now affords you the opportunity to locate yourself upon a splendid timber claim, accessible to both railroad and driving streams; cruise ranges from 4,000,000 to 9,000,000 feet. Price $2.50 per acre. We locate and you

purchase. Address P. O. Box 1206, Tacoma, Wash." Is that one of these advertisements that you found?

A. Yes, sir.

Q. Did that advertiser represent you or the company?

A. Not at all.

Q. Does that refer to the same class of lands that these others refer to, as far as you can tell?

A. Presumably so, yes.

Q. I notice a circular here headed: "Land Grant is Basis of Suit," purporting to be from the Evening Telegram, Portland, Oregon, Monday, September 16, 1907; and purporting to be an advertising circular of Coates & Horsman, Spokane, Washington, on the outside cover of which appears these words:

"C. H. Coates J. H. Horsman.

COATES & HORSMAN.

Railroad Timber Lands $2.50 per Acre.

ranging from 3,000,000 to 6,000,000 ft. to quarter section. Direct purchase. No rights required. Telephone Main 7245. Office, 415-416 Mohawk Block.

Spokane, Wash."

Do you know these gentlemen?

A. No, sir.

Whereupon witness testified that he received this circular in the usual way. That these gentlemen did not represent the Oregon & California Railroad Company, himself or any one else and that neither authorized the publication of this circular or the article.

Q. I notice another circular here, headed "Extracts from the Oregon and California Railroad Grants, Act of 1869," purporting to be from M. P. Alford, Chicago Office 923, 184 La Salle St. 'Phone Main 2022." Did Mr. Alford represent the company or you?

A. Not in any way.

Q. Did you receive this in the same way that you received these others?

A. Yes, sir.

Q. I notice a circular here enclosed by Mr. M. P. Alford, Chicago Office, headed: "Exceptional. An Opportunity to file on Timber Lands in Oregon." Did you obtain that circular in the same way that you obtained these others?

A. Yes, sir.

Q. And did Mr. Alford have any authority to represent you or the company?

A. No, sir.

Q. I notice a long circular here headed: "Railroad Lands. Statement of Facts," with pencil notation, "Trewavas, Lee & Co., 26 Montgomery St., S. F." with a report thereon by you to Mr. Herrin, of date March 19, 1912. Do you know this firm?

A. Not personally, any more than as shown by that report.

Q. Where do they purport to be doing business?

A. At 26 Montgomery Street, San Francisco.

Q. Have they any authority, or did they ever have any authority, to represent the Oregon and California Railroad Company, or to make these advertisements?

A. No, sir.

Q. One of these refers to a clipping from the Oakland Tribune, of Sunday, March 17, 1912, relative to lectures given by this firm. Do I understand that these gentlemen conducted a lecture course here in Oakland, or in San Francisco, trying to induce people to make application to them for the purchase of these lands?

A. Yes, sir.

Q. I notice a clipping here purporting to be from the Omaha World-Herald of December 18, 1909, which reads:

"Oregon.

$75.00 will locate you on a quarter section of the best agricultural land, level, heavy timber, close to the Pacific Ocean and accessible to railroads and rivers. Price $2.50 per acre when you secure title. Call or write 418 Karbach Block."

Is that one of these advertisements that you secured the same way?

A. Yes, sir.

Q. I notice another which reads:

"OREGON TIMBER LANDS.

You now have an opportunity to apply (without interference with homestead rights) for 160 acres of valuable timber and agricultural lands in Oregon at $2.50 per acre; timber averages 4,000,000 to 8,000,000 feet per quarter section (cedar and fir); accessible to railroads and rivers; close to Pacific Ocean and in a de-

sirable climate; limited 160 acres to each applicant; locating fees very reasonable.

FORREST LAND CO., 612-613 Shukert Bldg."

Is that one of these numerous advertisements that you procured?

A. Yes, sir.

Q. Who is the Forrest Land Company?

A. I don't know them at all.

Q. Who is the party who says, "Call or write 413 Karbach Block," and where is that?

A. That is a building in Omaha. I think I had some correspondence with the people, the name I don't remember now.

Q. Did these people, or either of them, or did this company, have any authority to represent the Oregon and California Railroad Company, or to act for it?

A. No, sir.

Q. I notice also an advertisement which reads:

"$150.00.

"$150 is all the money required to get 160 acres of timber land in Oregon cruising from 3 to 6 million feet of good merchantable timber. No prior timber or homestead applications affect this, as it is not Government land. For full information call at

OREGON DEV. CO., 1110 and 12 Call Building."

Did this so-called Oregon Development Company

have any authority to make this advertisement, or to represent the Oregon and California Railroad Company, or you?

A. No, sir.

Q. That appeared in a San Francisco paper, did it, or do you know?

A. Well, I should judge so, but I couldn't say positively.

Q. I show you a circular purporting to advertise "Timber Land Information Club, Daniel McDonald, Hotel Chandler, Marshfield, Oregon." Did this gentleman represent you or your company, or any one connected with it?

A. No, sir.

Q. Did he have any authority for the company, or for you, or any one else connected with it, to issue that circular?

A. No, sir.

Q. I notice, among others here, a clipping from the San Francisco Chronicle, headed "Denounced by Land Office. Statements of Northern Promoters Declared to be Untrue." "Special Dispatch to the 'Chronicle'." Under a Seattle date line. Is that one of the clippings that you made with reference to the activities of these gentlemen in advertising these lands?

A. Yes, sir.

Q. You had nothing to do with the publication of any of these notices, did you?

A. No, sir.

Q. I notice "San Francisco, March 16," 1912 date line dispatch which appears in the Oakland Tribune of Sunday, March 17, 1912, descriptive of the firm of Trewavas, Lee & Co. Is that the same firm about which you spoke some time ago in this examination?

A. That is the same firm, yes, sir.

Whereupon defendants offered all of these for the purpose of showing in part the origin of the long list of applications and that defendants did not authorize or promote the same and to show that this activity took place since about 1907, subsequent to the passage of the Memorial of the Legislative Assembly of the State of Oregon of February, 1907, to which said exhibit counsel for the Government objected as follows:

"The Government admits that the defendant Oregon & California Railroad Company never authorized any of the parties mentioned as having solicited applications to purchase to represent the railroad company or its land department, or any of its officers; but the Government objects to the evidence as immaterial and irrelevant, in so far as it may be claimed to characterize all of the applications to purchase, because it does not appear that all of the applications to purchase originated in this manner; and further objects to the exhibit upon the ground that it is immaterial how the parties were induced to make applications to purchase, if applications in fact were made and rejected, and the terms of the grant were violated in that manner; and the Govern-

ment objects particularly to the letters that are included in this exhibit, upon the ground that they are incompetent, hearsay, irrelevant and immaterial."

Whereupon said documents were received in evidence and marked "Defendants' Exhibit 272" which is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he had caused to be taken certain photographs, 88 in number, showing the improvements upon certain lands in even sections within the limits of these grants, which were collectively marked "Defendants' Exhibit 273" and that these photographs were taken under his instructions by field agents, showing as they made examinations of the even numbered sections, which are shown on the map, improvements or lack of improvements, as the case might be on those tracts. These photographs of tracts on the even sections are tracts of land within the limits of this grant and were taken the early part of 1912, possibly a few the latter part of 1911, but he thinks all were taken in 1912. Noticing a memorandum on one of these, which, for illustration, reads "Photo by C. W. Kempton 5/7/12/ S. E. ¼ Sec. 26-4, S. R. 5 E. Looking Southeast. No improvements except pile of stones which appear to have been used as temporary fireplace." He testified that Mr. Kempton was one of the field agents engaged in making examination of these lands and as a rule the memoranda on the backs of these various photographs identify the land claimed by so-called

settlers and the date when the photograph was taken. The photographs were taken under his direction and supervision for the use of his office. Noticing as a sample "S. W. 1/4 Sec. 34, Township 8 South, Range 2 East. Leon D. Hedges' Homestead. View looking north. Picture taken by C. W. Kempton April 27, 1912." He testifies that he ascertained that that was the homestead of this man on this particular quarter by abstracting the United States Land Office records and the field man then went upon the premises and took this photograph. Witness ascertained, or caused to be ascertained in the same way, the name of the so-called entryman and the description of his land and then the location of the land by his employes and these entries of settlers or entrymen were obtained from the United States Local Land Office records in each instance. These photographs give on the back the description of the particular land where the photograph was taken, or where it is shown in the picture. J. A. Kinser was one of the field agents and the photographs were taken under the immediate personal supervision of A. W. Rees and witness relied upon them as being correct.

Mr. Fenton: I offer these now, for the purpose of showing the general character of the improvements of the entrymen on the tracts described—general character of their improvements and general character of the land—under the promise, if required by the United States or counsel for the Government, to call the photographers and field examiners for further identification, if the defendants shall be so advised that it is neces-

sary, and ask to have them marked collectively as "Defendants' Exhibit 273."

Mr. Townsend: The Government objects to this evidence, on the ground that it is immaterial and irrelevant; that the character of the intervening sections and the character of the improvments thereon is immaterial to any issue found in the case; and the Government expressly objects to the statement of fact as to the presence or absence of improvements, and other like notations appearing upon the back of these photographs, on the ground that it is incompetent and hearsay. As to the identification of the photographs themselves, the Government reserves the right to object to them upon the ground that they are not properly identified if it shall so appear.

Whereupon said "Defendants' Exhibit 273" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness further testified that these photographs purporting to show panoramic views of certain sections of the country marked "Defendants' Exhibit 274" were taken under his direction and show the general character of the country in the immediate vicinity of the points noted on the back of each photograph and all within the limits of the Oregon & California grants; that is they are within the indemnity limits of the grants and cover, in view not only lands claimed by the Oregon & California Railroad Company, but lands in the even

sections. They are within the primary, as well as the indemnity, limits. They are intended to show the general character of the country within the exterior limits of the grant.

Whereupon defendants offered in evidence said "Defendants' Exhibit 274" and the same was received and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he had prepared a tabular statement marked "Defendants' Exhibit 276" and that it was compiled from the records of his office, the sources of which were the United States Local Land Office records, the General Land Office records and in part his attorney's records in Washington. These selection lists are made up in the first place and sent to the United States Local Land office. Two copies are retained by that office, one of which is transmitted to the General Land Office in Washington, the other retained in the Local office and two copies are returned to his office, certified by the Register and Receiver, one of which is retained in his office and the other one sent to his attorney in Washington. This tabular statement is made from these lists and from the ultimate action taken by the land office, local or general, and the ultimate action taken by the President of the United States in issuing patents. This "Defendants' Exhibit 276" correctly states the selection lists and all other matter found in this statement. The date certified, refers to the certification by the Local Land Office and this abbreviation

"O. C" refers to Oregon City, "Van." refers to Vancouver, "Ros." to Roseburg, "Port." to Portland, "L. V." to Lakeview, "Pat." means patented, "Resel." means reselected, "Rear." rearranged, "Rej." rejected, "Er. sel." erroneous selection and "Dup." duplicate.

Whereupon defendants offered in evidence such tabulated statement as "Defendants' Exhibit 276" which was received and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Witness understands that sales of granted lands were temporarily suspended pending examination that was being made into the condition of the land grants, records, etc., but there never was any order of withdrawal to his knowledge, and there was no formal order of restoration. Before he took charge of the land department at San Francisco he was advised by Judge Cornish, then Vice President of the Southern Pacific Company, that as soon as the records could be straightened out, after the fire, the intention was, as to these lands, in so far as they were not needed for company uses, to offer them for sale; referring by "not needed for company uses" to the lands described in Exhibits numbered 7 and 8 to the answer. Judge Cornish is William D. Cornish, who was the executive assistant to E. H. Harriman, President or an officer of the Oregon and California Railroad Company. The executive jurisdiction over these lands at this time was under Mr. Harriman, and Judge Cornish was his assistant and had special charge of this mat-

ter. Judge Cornish is dead. He had some correspondence with Cornish concerning matters relative to these lands, and thinks possibly some reference was made in that correspondence to the sale of these lands, other than the reserved portions. He had seen a telegram signed by Cornish to the predecessor of witness, Eberlein, which was part of the files of the office and preserved from the fire. There are two telegrams that relate to that land, which read:

"New York, April 5, '07.

C. W. Eberlein, (Received Apr. 5, 1907.)
(Land Dept. S. P. R. R. Co.)

San Francisco.

Please mail me report at convenience showing progress made in rehabilitating your office and also what extent you are receiving and handling applications for lands and especially lands other than timber and mineral.

W. D. Cornish. 3:50 P. M."

"New York, April 24, 1907.

C. W. Eberlein, (Received Apr. 24, 1907.)
(Land Dept. O. & C. R. R. Co.)

San Francisco.

I have not yet received any report from you as to progress in selling lands.

W. D. Cornish. 12:23 P. M."

Counsel for complainant objects to the materiality and relevancy thereof. Witness further testified that Chas. W. Eberlein, mentioned, was the acting land commissioner of the Oregon and California Railroad Com-

pany and his predecessor as land commissioner. He resigned some months before witness took charge, and Eberlein was succeeded by Henry Conlin, who is not now in the service. Witness succeeded Conlin.

The list described in Exhibit No. 7 to the answer of the defendants, is a statement showing right of way and unsold East Side Grant lands acquired through Oregon and California Railroad Company, and is correct. This suit No. 3340, now on trial, was brought before he was appointed land commissioner September 21, 1908. The complaint was filed September 4, 1908. Exhibit No. 8 to the answer of the defendants is correct. The records of the department, when he took charge in September 1908, showed the reservations contained in Exhibit No. 8 to the answer, which purports to be a schedule of unsold lands under reservation from sale on account of timber, iron, coal or oil which they are known or supposed to contain. So far as he knows, the reservation was made on the new records after the fire on the strength of a list which Mr. O'Brien furnished as being the list furnished him previous to the fire, of lands reserved for these purposes, referring to the fire of April 18, 1906 in San Francisco which destroyed almost all of the records of the land department. O'Brien was then Vice President and General Manager of the Oregon and California Railroad Company, and the operating official of the line of road from Portland to Ashland, and also an executive officer of the company. The record shows that these lands were reserved on account of being supposed or known to contain timber, coal, iron and oil, and his de-

partment did not undertake to determine that these substances which were supposed to be in these lands, were necessary to the railroad in its operation and maintenance; that was an operating department matter. They had been directed to be reserved by the operating department, and there have been no restorations of any kind with reference to these lands thus reserved, and no order of reservation made by the Board of Directors of the Oregon and California Railroad Company so far as he knows. He never received any formal order. These reservations are usually made on the request of some operating official who knows or thinks there may be something in the land. Since becoming Land Commissioner of the Oregon and California Railroad Company, the Department has at all times asserted ownership of the lands. As they examine the lands and find parties occupying them, the company asserts its ownership and insists that these parties take leases on the lands or vacate. The company has paid taxes on the lands—done whatever might be necessary to assert ownership. It has appeared in contests in the land office where the question of its right to claim has been raised, and it has defended its title of ownership. The company has sent field agents over about forty per cent of the entire grant, making examinations as to the character and value of the lands. The company maintains a force of fire wardens to patrol the lands and protect against fire during the summer. The examinations made by field agents cover forty per cent of the entire grant—78 per cent of the timber. The company has made a good many

leases of lands for grazing purposes, and where it finds some one occupying a small piece of land, there may be a few acres in cultivation, or where an adjacent owner wants to use the lands for pasture purposes, the company has made leases in those cases. In a good many cases the reason for making the lease where there is an actual occupation, is to prevent the statute of limitations running against the company by the occupancy. The company has maintained quite a force of fire wardens in the State of Oregon, patrolling the lands during the dry season. The company has paid taxes on these lands. The counties of Oregon in which the lands are situated, through their county assessors, have continued their assessments, increased their valuations for assessment purposes, and made assessments upon these lands the same as other or similar lands that are privately owned, and without regard to this suit or the claim of the United States. The valuations have been raised, witness thinks, in all of the counties, certainly almost all of them. The company is at all times endeavoring to keep the assessments down as low as may be possible. It is a fact, within his knowledge, that some of the counties, through their county courts, have authorized the assessors to employ, or have directly employed timber cruisers, and have made cruises of substantially all these lands for assessment purposes, and made their assessments on the basis of the board measure reported by their cruisers, and witness thinks that this accounts in part for the increased assessment of a considerable portion of these grants. There are about 240 leases out-

1981

standing. He has prepared a statement showing the lease number, date of lease, when it expires and the number of acres, and the total acreage is 24,671.02. Whereupon witness produces Defendants Exhibit 278, and states that it is a correct statement of what it purports to show. Whereupon defendants offered said exhibit in evidence and the same was received and marked "Defendants' Exhibit 278," which exhibit is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Defendants' Exhibit 278."

Whereupon the witness further testified that but for this suit, he should have proceeded to secure his examination of the land, determine valuations, and make sales of the land as opportunity offered. In so far as the lands were capable of settlement, the company would have preferred always to sell to a settler. Defendants Exhibit 279 shown witness, consists of advertisements published by his department, setting forth the facts that the lands of the Southern Pacific Railroad Company and the Southern Pacific Land Company now—formerly railroad company—are on the market for sale, and setting forth the natural resources of these lands. These advertisements show that they are specially addressed to farmers and others desiring to make settlement on these lands when purchased, which are capable of such settlement. The practice of publishing these advertisements was, generally speaking, commenced about July, 1911, when they actually had some lands ready for sale, and the advertisements had been spread broadcast over the Western

half of the United States, with the result that there has been a sale of a very considerable area of land within the past year. If this suit had not been brought he would have pursued the same policy with reference to the lands in Oregon that were capable of settlement, or that could be disposed of, other than the lands described in Exhibits 7 and 8. Whereupon defendants offered in evidence said collection of advertisements, marked "Defendants' Exhibit 279." Whereupon, upon examination by counsel for the Government, the witness further testified that this advertising material had been prepared and circulated by him or under his direction, since he became Land Commissioner of the several companies named by him, and has been prepared and circulated since the institution of this suit. Whereupon counsel for complainant objected to the introduction of this Defendants' Exhibit 279 as incompetent, irrelevant and immaterial. Whereupon said Defendants' Exhibit 279 was received in evidence and marked "Defendants' Exhibit 279," which is hereinafter set out and described and made a part of this Statement of the Evidence, and so identified herein.

Whereupon the witness further testified that Defendants' Exhibit 280 was in the files of his department when he took charge, that is, it was a part of the records of his office. Whereupon defendants offered in evidence Defendants' Exhibit 280, to which complainant objected as immaterial and irrelevant, which Defendants' Exhibit 280 is hereinafter set out and described and made a part of this Statement of the Evidence, and so identified herein.

Whereupon the witness, upon cross-examination, further testified that Defendants' Exhibit 278, containing statement of outstanding leases, represents as high an acreage as has ever been under lease, so far as he knows. There was very little correspondence in the files of the land department of the Oregon and California Railroad Company preserved from the San Francisco fire of 1906, but he can produce what was saved. The correspondence in the land department now is generally filed with relation to the land particularly referred to, and in so far as correspondence was saved from the fire and capable of being preserved, it has been filed in the same way, and may be scattered through a large number of files. It can all be produced.

This testimony is being taken in the Flood Building, at San Francisco. The greater portion of the offices of the Southern Pacific Company and its proprietary corporations are located in this building, so far as they have offices at San Francisco, but he could not say what the percentage is, he does not know; a very considerable portion of it is occupied by the offices of the Southern Pacific Company and its proprietary corporations, say six or eight floors, but does not know how many floors, or how much space they occupy. He has occupied his present offices since he became the Land Commissioner of the Oregon and California Railroad Company, and his personal room is number 880. The main entrance is number 801, where the clerical force is at work. There is upon the door of room 801 these words "801 Southern Pacific Company—Land Department—B. A. McAl-

laster, Land Commissioner—F. W. Houts, Assistant Land Commissioner." He has testified that the Southern Pacific Company never had a land department.

Whereupon, upon re-direct examination, witness further testified that that sign on the door of room 801 was put on the door about a year ago, excepting the words "Southern Pacific Company," and these words "Southern Pacific Company" were placed there within the last two months, and without his knowledge or direction, or permission being asked, or anything else, and he does not know who did it, or why it was done. The Southern Pacific Company has no land whatsoever. It has a few town lots, and has no occasion for a land department, nor has it a land department, and it has no records in the land department that are called Southern Pacific Company Land Department records, except the records of those few town lots about which he has testified, and for which he is land commissioner.

Whereupon the witness, upon re-cross examination, further testified that very likely he had stationery which was used for a number of years, which reads "Southern Pacific Company—Land Department," and which was used in correspondence referring to this grant. It also shows Oregon and California Railroad Company upon it, and Southern Pacific Railroad Company, as separate companies, but using a joint letter-head. Whereupon the witness produces, upon request of counsel for the complainant, Form 3811, and further testified that they used that form in conducting correspondence in relation to the affairs of any of the companies that they may be

corresponding about. Sometimes—a great many times they do not use a letterhead at all in conducting the correspondence of the office. In purely office correspondence they do not use any letterhead. Sometimes this letterhead is used in carrying on the correspondence relating to the affairs of his office, and sometimes it is not. He does not know how long it had been in use. He does not remember now just what they were using when he came, or whether, so far as the printed matter is concerned, this is substantially the form in use when he came; that particular form was not in use when he came. No one printed the words "Southern Pacific Company —Land Department" on this letterhead without his knowledge or consent. He does not know who it was that put the words "Southern Pacific Company" on the entrance door of his office. It has been there two or three months, but he has made no complaint to any one about it. He assumes that these words were put on the door by some one's order, but he does not know whose. He has had no occasion to inquire, and it does not make any difference to him.

Whereupon complainant offered Form 8811 in evidence, marked "Government's Exhibit 112," to which counsel for defendants objected as immaterial and irrelevant, which was received and so marked, and is hereinafter set out and described and made a part of this statement of evidence, and so identified herein.

Whereupon witness further testified that until the death of Judge Cornish in October or November, 1908, Judge Cornish had general charge of the land grant of

the Oregon and California Railroad Company and other land grants mentioned. Cornish was Vice President of the Southern Pacific Company, but could not state whether he was an executive officer of the Oregon and California Railroad Company, but his impression now is that he was not. He took instructions from Judge Cornish without inquiring what his relationship was to the company, because he had been working under Judge Cornish's instructions for a good many years. At the time he took his instructions he had not inquired whether Judge Cornish had anything to do with the Oregon and California Railroad Company or not, but Cornish gave him instructions concerning the company and he took and followed them. No deeds had been signed under direction of witness at the time of the death of Judge Cornish. Cornish died very shortly after witness became Land Commissioner.

Whereupon witness, upon re-direct examination, further testified that he had produced and tendered to Government counsel all of the records of his office that were saved from the fire of April, 1906, and that his assistant and one of the assistants to counsel for the Government are in possession of these records now, going through them, and he has gathered together and delivered, as stated, all of the records of the land department which were saved from the fire, so far as he knows of such records. Referring to Government's Exhibit 112, being letterhead Form 3811, witness says that the words and figures "Standard 12-11-20,000" means, standard form, December 11, 20,000 printed, and the

date when that supply of blanks was printed. The form was probably in use before that. Form 3311, with the words and figures "Standard 7-08-10,000" containing typewritten figures "March 23, 1909" is the form that was in use in the office when witness took charge of it in September 1908. This was clipped from a letter in his office files of date March 23, 1909, the date on which the particular letter was written. Government's Exhibit 112 was not in use when he came. That form is one that he prepared some time after he came, in consequence of consolidation of the three land departments into one office under his control, referring to the three land departments of the Southern Pacific Railroad Company, the Central Pacific Railway Company, and the Oregon and California Railroad Company, and the stamp on Government's Exhibit 112 "Southern Pacific Land Company" is a rubber stamp that has been placed on the form since the organization of the Southern Pacific Land Company, which is a part of this department. The Southern Pacific Land Company holds by purchase the residue of the Southern Pacific Railroad Company's land grants. Oregon & California Land Company is a company organized and holding title to lots in certain townsites in Oregon, and a few acreage tracts, generally called non-operating lands. He does not know as to how the stock is held, but assumes that it is a small corporation with a capital stock of about $5000.00—stock of which is held in trust for the Oregon and California Railroad Company.

Whereupon defendants offered in evidence Form

8311, Standard 7-08-10,000, March 28, 1909, and the same was marked "Defendants' Exhibit 281," which is hereinafter set out and described and made a part of this statement of evidence, and identified herein as such.

Whereupon the witness further testified that in speaking of the consolidation of the office, he referred to the fact that he was Land Commissioner of each one of these various companies, and as Land Commissioner had the records of all of these various companies under his control and in one office, or set of offices. There had been no legal consolidation of the land departments of these various companies. Their business is kept separate, and he is the one officer for all of them, and the records are kept in his offices under one control. Whereupon witness was shown a letterhead which was marked Defendants' Exhibit 282, and the witness testified that it is a letterhead that he found among his files and supplies, and the imprint "12-24-06" indicates that it was printed December 24, 1906, and the fact that Charles W. Eberlein's name is on there indicates that it was the form that he used while he was Acting Land Agent for the Oregon and California Railroad Company. The use of the form probably terminated about the time that Defendants' Exhibit 281 was printed in July 1908. Witness used the form of July 1908 for some time after he became Land Commissioner. He does not think that they used the other form, but thinks that they were practically all used up before that.

Whereupon defendants offered Defendants' Exhibit 282 in evidence, and the same was so received and

marked "Defendants' Exhibit 282," and is hereinafter set out and described, and made a part of this statement of the evidence, and so identified herein. Whereupon the witness further testified that these defendants' Exhibits 281 and 282 are printed upon green paper, which was the standard color used prior to Government's Exhibit 112, for all the Oregon and California Railroad Company's supplies used in the land department. He made up a separate pay roll for the Oregon and California Railroad Company, and it passed through the Oregon and California Railroad Company's land accounts and was paid by check on the Oregon and California Railroad Company. The Southern Pacific Land Company and the Central Pacific Railway Company each has its own pay roll form, its own pay roll is made out, passed through its own books of account, and is paid by its own checks. His salary as Land Commissioner for these different companies is apportioned in part against the Central Pacific Railway Company, in part against the Southern Pacific Land Company, and in part against the Oregon and California Railroad Company. He does not know of his own knowledge how the account is kept, where the Oregon and California Railroad Company has no funds available for payment of its indebtedness on account of the operation of the land department—that is properly an accounting matter. He does not know exactly, not sufficiently to explain to the court, what the relations of the Southern Pacific Company as a clearing house are to the Oregon and California Railroad Company in respect to its financial mat-

ters. He thinks that the proceeds of the sales of lands, with reference to the Union Trust Company, are handled through the New York Office, but he does not know the details of it. Supposing that he should receive the proceeds of a sale of land, for which a deed is executed in which the Union Trust Company joins, the proceeds would go to the Assistant Treasurer from the Oregon and California Railroad Company at San Francisco. The Auditor does all the bookkeeping in connection with that money and the Assistant Treasurer makes disposition of it. Witness has nothing to do with that.

Whereupon, upon further cross-examination the witness testified that six letters shown him marked "Government's Exhibit 118," were found in the files of the land department of the Oregon and California Railroad Company, which survived the fire of April 18, 1906, and the letters written upon green paper are answers that were written by his predecessor Eberlein. Whereupon complainant offered these six letters in evidence as Government's Exhibit 118, which said Government's Exhibit 118 was received in evidence, and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon witness further testified that the file which he had produced as requested, related to the years 1904 and 1905, and they were the only files which survived the fire. A very few boxes of letters, and just as they could take them out without reference to what they were or anything else, survived the fire, and the balance was destroyed. Whereupon the witness being

shown some correspondence during February 1904, identified same as Government's Exhibit 114, and testified that that is a part of the correspondence that was saved. Whereupon complainant offered said correspondence in evidence and the same was received and marked "Government's Exhibit 114," which is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon witness further testified that Government's Exhibit 115 is also a part of the files of the Oregon and California Railroad Company Land Department that survived the fire. Whereupon complainant offered Government's Exhibit 115 in evidence, which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon the witness further testified upon redirect examination, that he had made additions to Defendants' Exhibit 257, and each of them had been certified by the county clerk or county recorder of the respective counties, showing the dates on which the various deeds were recorded in the county records. This is shown on the right hand margin of each page. The necessary corrections made in the book and page of record and each county statement has been certified by the county recorder or county clerk of the county.

Whereupon the defendants re-offered Defendants' Exhibit 257 heretofore received in evidence and so marked, and counsel for the Government making no ob-

jection that this is a summary from the public records certified by the county clerk, instead of a certified copy of each of the documents, and the same is hereinafter set out and described and made a part of the statement of the evidence and identified herein as such.

Whereupon the witness further testified that he had prepared a statement concerning the lands involved in certain suits pending in the then Circuit Court, now District Court of the United States for the District of Oregon, wherein the United States is complainant and the Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, Union Trust Company, and other co-defendants named in the statement are parties defendant, showing the number of the suit, the number of the contract involved, the purchaser, the acres involved, the price per acre, the consideration, the number and date of each deed, the grantee, the date of contract, purporting to be a statement summarizing what are commonly called in this record Forty-five suits against so-called Innocent Purchasers and others. This statement is compiled from the bills of complaint in the various cases, and from his record of the sales that were made, and it is a correct statement. Whereupon defendants offered and the same was received in evidence as Defendants' Exhibit 294, which is hereinafter set out and described and made a part of this statement of the evidence and identified as such herein.

Witness further testified that he had prepared a map showing the location of the lands involved in the so-called Forty-five suits that are summarized in Defend-

ants' Exhibit 294, and it shows in colors the lands involved in the various suits, and bears a legend showing the particular suit indicated by each color, the number of suit, acres involved, and upon the face of the map the name of the purchaser of the land who is the defendant in the suit. The lands are correctly shown on this map. The lands of the Oregon and California Railroad Company that are involved in this pending case have not been colored on this map.

Whereupon defendants offered Defendants' Exhibit 295 in evidence and the same was received and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon the witness further testified that he had prepared a statement showing the executory contracts outstanding January 1, 1908, covering the land sales of the Oregon and California Railroad Company, giving the number of the contract and date of the contract, the name of the contract holder and description of the land, the number of acres, the price per acre, the consideration, the amount unpaid when default occurred, the date of default, the date when payments were made after default occurred, the amount of such payment, if made, the date of closing account in consequence of the default, the date of final payment or deed, and the character of land as shown by the field agent's report where there were any reports, the name of the field agent and the date of examination where there were such field agents and examination, and showing the totals of these

various matters. The statement was prepared from the land department records and is correct in so far as those records give the information. The figures 2110 under the heading "Contract number," means the number of contracts that were outstanding on that date. The figures 462,614.59 mean the total number of acres covered by those outstanding contracts, and under the column "Consideration" the figures $2,746,216.35 indicate the total purchase price for the lands covered by those contracts, that is, the purchase price agreed to be paid. The figures $207,614.14 represent the portion of the purchase price which was unpaid on contracts on which default had occurred prior to January 1, 1903, that is, the total amount of overdue payments, or total amount of payments where default had occurred necessary to take up the entire contract, that is, contracts that were in default, and the figures $9580.19 mean that that is the amount that was subsequently paid after January 1, 1903, of the total amount of $207,614.14 which was unpaid on that date on defaulted contracts. Whereupon defendants offered in evidence this statement marked "Defendants' Exhibit 296." Whereupon, upon examination by counsel for complainant, the witness further testified that as far as they had the information, under the heading "Name of contract holder," he has given the name of the assignee. In many cases they have neither the name of the assignee nor the original purchaser. This statement covers not only the contracts which were in default, but all pending contracts on January 1, 1903. Whereupon counsel for complainant objects to the last

two columns of this statement as incompetent, irrelevant and immaterial, and upon the specific ground heretofore urged as to the character of the lands.

Whereupon the witness further testified upon redirect examination, that he had the original reports from the men who made these reports in the records of his office, and this memorandum is made from these reports and is correct in accordance with these reports. These reports are part of the official records of the Company, and were acted upon by him, acting for the company as Land Commissioner, in handling these lands, and relied upon by him as accurate. They were made in the usual and ordinary course of business as conducted by field agents in this business. These examinations by field agents, being of lands under outstanding contracts, were made on a different form, and covered somewhat different information, that is, they covered practically the same information as to the character and topography of the land, but went more into the question of improvements, the whereabouts of contract holders, and like information, which was not necessary in connection with unsold lands.

Witness made another report or statement showing sales made during the year 1903, and it contains a complete statement of all contracts issued. Cash sales were not included in this statement, and the statement is correct. It is obtained from records of the sales made. Whereupon defendants offered and there was received in evidence this statement marked "Defendants' Exhibit 297" and also "Defendants' Exhibit 296," which are

hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon the witness further testified that the reports referred to by him are a part of the office files; that they were made in the ordinary course of business and there are no new names indicated other than those shown on Defendants' Exhibit 296; witness relied upon these reports as being correct in the administration of this grant and in the sale of these lands. Contract No. 6695, in favor of N. Rust, is still an outstanding contract and is not reported as defaulted, the payments due on it have not been paid and it is still a valid contract. Whereupon complainant interposed the same objection to Defendants' Exhibit 297 as was interposed to Defendants' Exhibit 296. Whereupon the witness further testified that Defendants' Exhibit 298 is a statement prepared from his office records and is correct; there are statements there for each year from 1903 down to 1912. These yearly statements, Defendants' Exhibits 297 and 298 supplement Defendants' Exhibits 296 and 297. By referring to Defendants' Exhibit 296 one can, wherever his records show, ascertain the name of the purchaser which is not included in these annual statements since January 1, 1903; there were no contracts issued after 1903. Whereupon defendants offered and there was received in evidence Defendants' Exhibit 298, which is hereinafter set out and described, and made a part of this statement of the evidence and identified herein as such. Witness further testified that he had prepared statements show-

ing "Defaulted contracts upon which accounts were closed during 1903," and "Contracts not in default January 1, 1903, upon which default occurred during 1903, but accounts not closed during 1903," and the contracts outstanding January 1, 1903, from the records of the Oregon and California Railroad Company Land Department, and these statements are correct. Whereupon defendants offered these statements in evidence and the same were received and marked Defendants' Exhibit 299, which is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Witness further testified that he had prepared similar statements, marked Defendants' Exhibits 300, 301, 302, 303, 304, 305, 306, 307 and 308, covering the succeeding years and testified that these statements were prepared from the Land Department records of the Oregon and California Railroad Company and correctly show the facts. Whereupon defendants offered each of these statements in evidence and the same were received and marked respectively, Defendants' Exhibits 300, 301, 302, 303, 304, 305, 306, 307 and 308, which said several exhibits are hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Whereupon the witness upon further cross-examination testified that his experience in the handling of railroad lands, commenced in 1882 as a clerk in the office at Kansas City, which handled the Kansas Pacific and Denver Pacific grants; those roads were consolidated with the Union Pacific in 1880 and were consolidated at the time he entered the office; he served

in that office until 1887 when it was consolidated with the Omaha office, which handled the grant of the Union Pacific proper. Mr. Harriman was not connected with the road at the time witness went to Omaha in 1887; Harriman's connection with the road began about 1899 or 1900. Witness knew Judge Cornish; Cornish's first connection with the Union Pacific was as special master in chancery during the receivership, which occurred about 1893, and Cornish was made special master shortly after that; the receivership continued until Mr. Harriman re-organized the properties in 1898 and until the reorganization became effective. Shortly after the road was reorganized Judge Cornish became connected with it as Vice President and held this position until his death. Judge Cornish was located at New York; he was one of the executive officers of the Union Pacific, having general supervision of the subject of its land grants and supervised the general handling of those grants by the land commissioner or other officer having direct charge of the subject. The policy of the Union Pacific at the time of the consolidation of the Kansas City office with the Omaha office in 1887, in regard to the handling of the land grants of the companies composing the Union Pacific System, was the same policy that had been in force for years before, generally speaking. The several grants were owned by the one company from 1880 on. The Union Pacific acquired the properties of the Kansas Pacific and the Denver Pacific by consolidation, and the Kansas Pacfiic and Denver Pacific corporations became extinct. So that selections and lists under the

POOR COPY

Denver Pacific and Kansas Pacific grants, after the consolidation, were made by the Union Pacific itself, and patents issued to the Union Pacific as the assignee or grantee of these other two corporations. In May, 1890, he became land commissioner of all these Union Pacific grants mentioned, and served in that capacity until 1908, when he came to San Francisco and entered upon his present employment. During that period from 1890 to 1908, a period of 18 years, or after Judge Cornish became connected with the Union Pacific' he supervised in a general way the work of witness as land commissioner of the Union Pacific. Judge Cornish was the man who in 1908 sent witness to San Francisco to enter upon his present employment; and after he entered upon his present employment his work was still supervised by Judge Cornish until his death. There was no real change in that respect as to the person who supervised his work after he came to San Francisco from what it had been when he served in Omaha as long as Judge Cornish remained alive. Judge Cornish died November 1, 1908. Judge Cornish was succeeded, temporarily, in his work at San Francisco, as land commissioner of these several companies, by R. S. Lovett and then by Mr. Herrin. Lovett supervised his work from about April or May, 1909, until March 1, 1910, since which latter date his work has been under the supervision of Mr. Herrin, general counsel of the Southern Pacific Company. Witness could not say positively as to whether Judge Cornish ever held any official position with reference to the Oregon and California Railroad Company and he never

addressed him as such official as he recalls. He thinks that Judge Lovett was president of the Oregon and California Railroad Company, but not positive about that. Mr. Harriman was president of that company until he died, and thinks Lovett was president after Mr. Harriman died. His work as land commissioner of these several companies mentioned has to some extent been supervised by President Sproule. Mr. Kruttschnitt has not, since witness' connection with the land department at San Francisco, or with the Union Pacific Land Department, had any supervision of land grant matters pertaining to these railroads. The land department maintains a number of men as mineral field agents, and ordinary field agents, and timber cruisers, who are engaged in examining the lands under his jurisdiction, the lands of the Oregon and California, the lands of the Central Pacific, and the lands of the Southern Pacific Land Company. The Southern Pacific Company maintains a geological department, and it has been his practice to call upon the consulting geologist at the head of that department for information concerning mineral lands and at his request he has made examination of lands and charged the cost of that work against the land department, and witness charges it against the proper company. He has not done any work of that character in Oregon. He does not know why the Southern Pacific Company maintains a geological department, that company has always had it so far as he knows; but he does not know how it was instituted. He is familiar with the litigation involving the oil lands down in Elk Hills,

which is now pending in the southern district of California, in a general way, but does not know that the Southern Pacific Railroad Company contends by way of a defense that Mr. Dumble, one of the geologists of the Southern Pacific Company, was not an employe of the Southern Pacific Railroad Company, and therefore the latter company is not bound by his knowledge, although witness is not fully familiar with that feature of the case. He knows Mr. Dumble, who is head of the geological department of the Southern Pacific Company; he is the consulting geologist and has an office at San Francisco and also one in Houston, Texas.

"Q. Now, Mr. McAllaster, the fact is that you are selected and employed by the Southern Pacific Company, without saying anything at the present as to how your salary is paid, but you were actually selected and employed by Southern Pacific officials for the Southern Pacific Company, were you not?

A. Well, that is not in accordance with my appointment. My appointment was by the Board of Directors of each company; and my appointment by the Board of Directors, or rather the executive committee of the Southern Pacific Company, was made some time after the other appointments, and for the limited purposes named in the appointment only.

Q. But at the time that Judge Cornish transferred you from Omaha to San Francisco, you had an understanding with him as to the terms of your employment, did you not?

A. Yes, sir.

Q. The amount of your salary?

A. Yes, sir.

Q. And that was afterwards apportioned among the companies the boards of directors of which appointed you land commissioner?

A. At the same time that the resolution of appointment was made by each board, the compensation to be paid by that company was also fixed by another resolution.

Q. I understand; but your total compensation was fixed by Judge Cornish at the time that he transferred you from Omaha to San Francisco, was it not?

A. Yes.

Q. And after you got to San Francisco, the several companies whose granted lands came under your management then divided the total that you were to receive among themselves by resolution of their board of directors?

A. Well, just as I hire a man today as a field agent, for instance, and he is to do work wherever I happen to send him for any one of the companies or all of them, as the case may be.

Q. That is another circumstance, is it not—that you hire men for work generally upon all of these land departments, and then charge for their services against the several companies as you may direct them to work from time to time?

A. Yes.

Q. The only difference in your own case being that yours is a fixed charge, apportioned arbitrarily among

the several companies regardless of the amount of time that you may spend one month on one land grant or upon another?

A. Yes.

Whereupon the witness further testified that at the time that quit claim deeds were adopted by the Oregon and California Railroad Company, he was not in its employ and he has no way of testifying as to what the real reason for the change was, except as he might infer or may have been informed by others. He could tell in any particular individual case why a quit claim deed was given in that case, because the record will show the reason why. He has gathered from the office records and reports that these forms were used in connection with unpatented lands. He does not think quitclaim forms were used generally for patented lands. Since he became land commissioner he used a form which he thinks reads: "Grants and conveys all the right, title and interest the company has or may hereafter acquire." He does not consider that a quitclai mform of deed. And he makes this distinction in his answer that he does not consider a deed which grants and conveys the right, title and interest that the railroad company has or may hereafter acquire as a quitclaim form of deed; he means by the term quitclaim form of deed the old familiar form which simply quitclaims the present interest of the grantor. And this deed covering interest that may hereafter he acquired distinguishes it in his mind from the ordinary quitclaim deed and the fact that they used the word "grant" in there. No warranty forms of deed have

been used as to patented or unpatented lands since he became land commissioner of the Oregon and California Railroad Company. He knows that generally on the Coast "bargain and sale" deed is used instead of a warranty for all land conveyances. There are comparatively very few warranty deeds used on the Pacific Coast by anybody. There is a limited implication of warranty in a "bargain and sale" deed, at least in California; he would not say as to the other states. He would not know and would not undertake to give the technical definition of what the implied warranty is. The only reason why the Oregon and California Railroad Company uses a form of deed which carries with it no warranties whatever when conveying lands that have been patented to it by the United States, that he knows of, is that it is practically the standard form for all of the several companies and generally the form that is used by individuals. Referring to these maps and statements and other compilations identified by witness, and received in evidence, witness testified that he has a good deal of personal knowledge as to the accuracy and details of them, in that he supervised the making of them, and to a considerable extent had personal knowledge of the details that go into them; but he would not admit that he had personal knowledge or information as to the details of the maps showing what lands of the even numbered sections intervening the lands involved in this suit were entered under settlement laws and what were entered under non-settlement laws, but would admit that the details of abstracting the records of the United States

Land Office and county records were done by the employes of his department, the information they obtained was sent into the department and then under his direction it was transferred to these maps. He knows that the information which they sent in is correct, because they were sent out to get the correct information and he relied upon them to do so. This does not constitute personal knowledge upon his part as to the accuracy of those details and he disclaims in a way any personal knowledge of the abstract work, because that was all done by employes outside of the office and he did not see them do the work, and was not with them at the time they were doing it. The map was made in the office from the information they furnished and under his supervision. He did not check over all of the details of that map, but simply directed men upon whom he relied and upon whose competency and integrity he relied, and who were employed in his office to make the map as he instructed them to. He can say that if he was using the map for any purpose, he should rely upon it as being correct. He understands the distinction between the knowledge that a business man might rely upon and the knowledge which may be the basis of evidence in court as personal knowledge of the facts. He did not personally put the coloring on the map, but he did watch while the work was being done, looked at the map from time to time and saw that it was being correctly done and as he wanted it done. He did not check each individual tract to see that it was colored properly, but presumes that he checked some of the tracts to see that they were colored properly. He does not remember just

what particular details he had to do with the map, but had the work done in such a way that he could ascertain that it was correct, by relying upon the accuracy of the men who were doing the work. That is not the sole basis of his knowledge of the accuracy of the map. He was looking at the map every few days, and seeing that they were proceeding along the lines of what was laid down for them to do, and doing the work as he wanted it done, and correctly, but he did not check each individual entry and showing on the map. If he discovered anything that was not right he had it corrected. There is not a piece of work that is done in his office that is not checked at least once, or perhaps two or three times before it is considered final, by the men under him. He does not undertake to do these things himself, there are so many of them. His general statement with reference to this map is also true of the others in a general way. And it is true with reference to these compilations that have been introduced in evidence, to a considerable extent; some of these compilations he did more detail work on than others. In each instance he relied on the records of the office, and a large part of this was done before he became connected with the office.

"Q. Now, take for example, that map which purports to show what lands are timbered and what lands are agricultural—defendants' exhibit 260—now all you know as to the accuracy of that map is that you had employed graders and examiners of land from time to time, and you found in the office reports of graders and examiners who were employed before you became con-

nected with the office, and you directed that the reports of all of these examiners and graders be used for the purpose of compiling a map that would contain the information which their reports conveyed to the land department—isn't that true?

A. Yes, sir.

Q. As to the accuracy of the reports of these graders and examiners, you have no personal knowledge?

A. I have not.

Q. Other than your personal reliance upon those men?

A. That is all."

Whereupon the witness further testified that he realizes that men under certain circumstances might reasonably differ as to whether a given piece of land was susceptible to cultivation after the timber was removed. The differences in opinion of land examiners and land graders would not be very great, the character of the land is too well defined. Frequently he had land examined by more than one grader; sometimes intentionally and sometimes the work will overlap. Sometimes the work was done three or four years ago and he would want it done over again as of date. One piece of land may be timbered land three or four years ago and somebody cut the timber off in the mean time. There is nothing to show upon the map which of these lands, if any, would be suspectible to cultivation after the timber was removed. He does not remember that in the an-

nual reports of the Southern Pacific Company each year that it is stated that it has a land department, and gives the officers thereof, but thinks his name is shown in the annual report of the Southern Pacific Company, but just how it is shown he does not remember. Defendants' exhibit 260 purports to give the character of the land in detail by sections. An individual examination of each section is not necessary in order to prepare such a plat. He has many reports in the office to show a particular district is all timbered, or a particular township, or a part of a particular township. Those were not taken into consideration in making up that detailed statement of forty per cent examined. They were taken into consideration in making Defendants' Exhibit 262, which simply goes into the general showing of what is timbered land and what is non-timbered land. There is nothing on the map to show what part of it is based upon detailed examination of the land, and what part is based upon general reports as to large areas, for instance a township or a half township. When a man reports as to an entire township instead of by sections, he has not made a close detailed examination of it, or he would have reported by sections. Very frequently they get what he calls recognaisance reports, which are intended to tell in a general way where the timber is and what part is non-timbered claims, or what part may be agricultural land. When land has timber on it, it is, generally speaking so classified by him and his graders, without reference to the question whether it could be used for agricultural purposes after the tim-

ber is removed; at the same time his reports show that the printed forms call for the information as to whether or not the land will be agricultural land after the timber is taken off. At the same time, for all present purposes they call that timber land. Defendants' Exhibit 262 does not show what is suitable for agriculture after the timber is logged off, and the stumps cleared out and the land leveled up and put in shape for farming. That has not been taken into consideration there. That is called timber land, because that is what it is valuable for now, and will be for a good many years to come. It will take a long time before the land will be worth the expense of removing the timber and grubbing out the stumps to make it agricultural. There is a very large part of the lands involved in this suit that never will be suitable for agriculture. There is another part that after the land is logged off, if developements in the way of transportation facilities and opening of the country are sufficient, or if they ever become sufficient to warrant the expense of grubbing out the stumps, the land might then be used for agriculture, but that will be years and years from now. There may be some tracts that might warrant that expense in the near future, but they are a very small proportion of the whole.

"Q. Now, from Albany in this state to the state line, there are no transportation facilities except those controlled by the Southern Pacific Company. Isn't that true?

Mr. Fenton: From Albany which way?

Mr. Townsend: South to the state line. I mean west of the Cascades.

Mr. Fenton: That projection of the line, about 25 miles of it built from Medford to the Rogue River, called the Medford and Eagle Point out from Medford; and then there is the Oregon and Southeastern for 18 miles into the Bohemia district, that we don't have anything to do with.

Mr. Townsend: Where is that?

Mr. Fenton: Cottage Grove to Bohemia. It is 18 or 20 miles.

A. And there is the whole Pacific Ocean with several streams extending up into this grant that can be utilized for transportation purposes.

Q. Particularly fish.

A. Particularly what?

Q. Particularly fish?

A. I am not a fisherman. I don't know.

Q. You don't know why those streams have not been utilized for transportation purposes, do you?

A. To some extent because the harbors are not as good as they might be, or as good as the population immediately surrounding those harbors hope to make them in the near future.

Q. But in a general way, it is a fact, is it not, that the Southern Pacific is the only means of transportation with reference to these lands, from Eugene, I will put

it, south to the southern boundary line of the state?

A. No, because they can be transported out over the ocean, and have been—the products are being transported.

Q. How do they get to the harbor?

A. Down the rivers.

Q. What rivers?

A. The lower portions of the Rogue River, the Umpqua River and Siuslaw River.

Q. How long a distance from the harbor are those streams navigable?

A. Well, I cannot give you the distance in miles, but I do know that more or less lumber is taken out through those streams and through the bays at their mouths.

Q. Well, do you mean that there are mills situated upon the streams, and that the lumber is transported down the streams for any considerable distance to the harbor, or do you mean that the logs are floated down to the mills?

A. I don't know for what distance. I do know that lumber is—I say I know—it is my information from reliable sources that lumber is transported from the west coast of Oregon by water.

Q. Now, what companies, what mills do you refer to?

A. I cannot give you the names of any of them.

Q. Do you refer to the Smith mill on Coos Bay?

A. As I said, I cannot give you the names of any of them, but it is my general information that that is done.

Q. Well, do you know that there are any transportation facilities that would be available to the lands in this grant for agricultural products to be transported to the harbor and thence by sea.

A. I can judge from the fact that there have been a half dozen ports organized under the Oregon law for the purpose of developing that traffic, by water from the west coast of the State of Oregon. There is some traffic now, and they expect to develop more.

Q. You have not answered my question as to whether or not any of that is available with the present facilities to any of the lands involved in this suit.

A. Well, very little with the present facilities.

Q. So that, speaking with reference to the present facilities, it is a fact, is it not, that the Southern Pacific Company is the principal means of transportation with reference to that portion of the land involved in this suit that are situated from Eugene south to the southern boundary line of the state?

A. It is the principal means of transportation for that territory, yes."

Whereupon the witness further testified that he did not admit that a large quantity of this land would be available to settlement if it had improved transporta-

tion facilities. A small quantity might be made available for settlement with a great deal of expense. He does not classify as non-agricultural lands, lands which are not now available for settlement because of the lack of transportation facilities. They are classified as timber lands if they carry timber, or they are classified as grazing lands if they do not carry timber. That is all they are good for now, and all they will be good for for a good many years to come and until transportation facilities are afforded and until settlement within the Willamette and other valleys, has reached a point where there is no more room, and the settlers have been forced into the outlying districts. In other words one could not today, and witness is speaking now as a land man, sell those lands that witness is speaking of for agricultural purposes. No one would buy them for that purpose; meaning, generally speaking, the lands in this suit. He knows from 25 years experience in handling lands. Not handling these lands, but from handling lands of like character; he handled a lot of them in California during the last three or four years. He has had no experience whatever in handling these lands or offering them for sale upon the market. These have not been on the market. He has had eight or nine thousand applications to buy these lands at $2.50 per acre, which he has refused. Those applications did not contemplate buying them for farming purposes, because that is not what they are useful for and he assumes to speak for the purpose, the mental purpose, of eight thousand people that he has never seen, because he can read from

the character of the land itself what they are buying it for. When a man applies to buy a quarter section at $2.50 an acre that carries fifty or a hundred thousand feet, board measure, of timber to the acre, it is absurd to suggest for a moment that he is buying that for agricultural purposes. He is buying it for the timber pure and simple. The mere fact that a man offered one hundred dollars an acre for the land would not make it agricultural land, it would make it timber land. He does not know that the price of $2.50 an acre has anything particularly to do with the character of the land. He has not seen any of this land applied for except from the railroad. He has not been over the land personally and he does not know from what he has seen from the railroad that he has seen any tract covered by these applications. Without seeing the lands or the persons who applied to purchase it, he would not assume to assure the court that none of them applied to purchase that land for the purpose of homes and there may be some tracts that homes might be made on, but speaking comparatively and taking into consideration all of the lands involved in this suit, the percentage is very small. So far as the settlement of these lands, using that word settlement in the sense of going upon them and living there and making homes on the tract, he does not think the suspension of sales has retarded the settlement of Oregon at all. It possibly has delayed somewhat the timber operations in Oregon. He does not know that settlers have gone upon the lands intervening those railroad lands, and have been compelled to abandon their

homes because they were living in a checkerboard, where each section was separated from the other section by this railroad land that is withheld from sale. If a settler could get a quarter section on an even numbered section, and off that quarter section could make his living, it would not make any difference whether there was any other quarter section open for the entry of someone else or not. If he went on a quarter section and the surrounding land was withheld from the markets and the result was that he could not make a living, then the land that he went on was not suitable for his settlement. Lands otherwise suitable for settlement will not be rendered unsuitable for settlement in the sense that the settlement would be profitable by the withholding of the intervening lands from the market. The withholding of the intervening lands does not render the others unsuitable for settlement.

"Q. Does it not render them unsuitable for a home, in the sense that the surrounding lands cannot be settled up, roads cannot be opened, schools cannot be established.

A. But surrounding lands are settled up, roads are opened, and schools are established in this very land grant. You are outlining conditions that do not exist.

Q. Well, how do you know they do not exist?

A. From the reports that I have of conditions that do exist.

Q. Now, you have had some thirty or forty men employed in examining this grant for different purposes

that you named in your direct examination, did you not?

A. Yes.

Q. Did you ever instruct one of them to ascertain whether any settlers had been compelled to abandon their settlement because of the retardation of development of the vicinity in which he lived, by the withholding of these railroad lands from sale?

A. I do not know that we ever instructed them to go into the reasons why the lands were abandoned. In fact, that would be a hard thing to do, when you go and find a quarter section with some battered down improvements on it, that show abandonment for years —it would be pretty hard to find the man that was there and abandoned it, and find out why he abandoned it. We have not undertaken to chase up that information.

Q. Because that would be adverse to you, wouldn't it?

A. No, because it would be of no earthly use to us or anybody else.

Q. You have not looked for any information that would be adverse to you, have you?

A. And I want to say further that my whole testimony has been based on the understanding that I was testifying from knowledge gained in my work, not from personal examination. I have stated that many a time. What I have said, I have said knowing it to be the fact from the information that I have gained, and necessarily gained in carrying on my office.

Q. But you have no personal knowledge of the accuracy of the information upon which you base your testimony?

A. Well, I have this personal knowledge, that if I find a field agent or other man don't accurately report the facts, he don't stay with me very long.

Q. How would you find it out?

A. In many ways."

Whereupon the witness further testified that they have many ways of finding out whether a man is doing his work right or not. If the company had occasion to have that particular piece of land re-examined by some other field agent, and the report was absolutely different, then they would undertake to have both reports verified and see which one was right. Witness is speaking now of an individual particular quarter section where, for some reason or other, the company thought here had been some mistake made. He has had many quarter sections re-examined because he thought there was some mistake made. He is speaking now of his entire experience and not particularly in this Oregon and California grant. The question necessarily goes into 25 years of experience in handling land grants, and one cannot be confined to any one particular quarter section, or any one particular land grant. If an examiner had been in his employ and he had found him accurate, he would rely upon his report being correct. He would not know if the report was correct except in so far as he relied upon that man.

Whereupon the witness upon re-direct examination further testified that he recognized "Defendants' Exhibit 366" as an official publication of the United States, which was received in evidence and marked "Defendants' Exhibit 366" and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon the witness recognized House Report No. 2215 House of Representatives, Fifty-first Congress, first session, as an official document published by the United States.

Whereupon defendants offered said report in evidence and asked leave to have the map read into the record, together with the amended bill accompanying the report, as a part of the same. Whereupon it was stipulated between counsel for the respective parties that all of the reports of the Committees of either House of Congress and the general debates upon the subject of the bill in both Houses of Congress, may be considered as having been reecived in evidence the same as if extended at length in the record. It being understood that such evidence shall be subject to the objection that the same is incompetent, irrelevant and immaterial, and that the purpose of this stipulation is that the Court shall take Judicial notice of the official reports, the Congressional record containing these Committee reports, the Congressional debates and other proceedings without further identification. Counsel for the Government objected to the introduction of Report No. 2215 and the

bill accompanying the same on the ground that the same is incompetent, immaterial and irrelevant and counsel for defendants objects to the admissibility of the debates in Congress or Committee reports generally as incompetent.

Whereupon said report No. 2215 and bill accompanying the same was received in evidence and is in words and figures as follows:

"The Committee on the Public Lands, to whom was referred the bill (S. No. 2781) 'An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and for other purposes,' having fully considered the same, would respectfully report:

"On April 1, 1890, this committee reported a bill on this subject (H. R. No. 8919), which bill has not yet been considered by the House.

"In some respects the two bills are in substance the same, and we recommend the amendment of the Senate bill No. 2781 as follows:

"Strike out all after the enacting clause, and insert—

"(1) Section 1 of the House bill as section 1. This is substantially the same as section 1 of the Senate bill.

"(2) Section 2 of the House bill as section 2.

"(3) Section 2 of the Senate bill as Section 3.

"(4) Section 4 of the House bill, which is identical with section 4 of the Senate bill.

"(5) Section 3 of the Senate bill as section 5.

"(6) Section 5 of the Senate bill with an addition as to the reduction in price of lands restored to $1.25 per acre, to stand as section 6.

"(7) Section 6 of the House bill to stand as section 7. This leaves of the Senate bill sections 7, 8, and 9.

"Section 7 would include the Tennessee and Coosa and the Mobile and Girard Railroads in Alabama, and extend the time for their completion one year.

"Section 8 applies to the Gulf and Ship Island Railroad in Mississippi.

"More than thirty years have elapsed since these grants were made by Congress in aid of these railroads, and not only has the policy of making such grants been long abandoned, but your committee think proposal to extend time for construction has not met with favor in the House. And so they do not include these sections in the amended bill.

"Nor do the committee recommend section 8.

"The committee has for several years recommended in forfeiture bills a prior right of purchase of a limited quantity not exceeding 320 acres of forfeited land to any one having a contract of purchase with the State or corporation under the grant.

"Section 8 proposes to give this privilege to holders of tax titles and to an unlimited amount of land.

"We do not give this our assent.

"We recommend that the Senate bill, amended as indicated, do pass.

"AMENDED BILL.

"AN ACT to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, for the construction or benefit of which lands have heretofore been granted; and all such lands are declared to be a part of the public domain: PROVIDED, that this act shall not be construed as forfeiting the right of way or depot grounds of any railroad company heretofore granted, or lands included in any city, town or village site.

"Sec. 2. That all persons who, at the date of the passage of this act, are actual settlers in good faith on any of the lands hereby forfeited and are otherwise qualified, on making due claim on said lands under the homestead law within six months after the passage of this act, shall be entitled to a preference right to enter the same under the provisions of the homestead law and this act, and shall be regarded as such actual settlers from the date of actual settlement or occupation; and any per-

son who has not heretofore had the benefit of the homestead or pre-emption law, or who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this act. The Secretary of the Interior will make such rules as will secure to such actual settlers these rights.

"Sec. 3. That in all cases where persons are in possession of any of the lands affected by any such grant and hereby resumed by and restored to the United States, under deed, written contract with, or license from, the State or corporation to which such grant was made, or its assignees, executed prior to January first, eighteen hundred and eighty-eight, they shall be entitled to purchase the same from the United States, in quantities not exceeding three hundred and twenty acres to any one such person, at the rate of one dollar and twenty-five cents per acre, at any time within two years from the passage of this act, and on making said payment to receive patents therefor; PROVIDED, That in all cases where parties, persons, or corporations, with the permission of such State or corporation, or its assignees, are in the possession of and have made improvements upon any of the lands hereby resumed and restored, and are not entitled to enter the same under the provisions of this act, such parties, persons, or corporations shall have six months in which to remove any growing crop, and within which time they shall also be entitled to move all buildings and other movable improvements from said lands: PROVIDED FURTHER, That the provis-

ions of this section shall not apply to any lands (situate in the State of Iowa) on which any person in good faith has made or asserted the right to make a pre-emption or homestead settlement: AND PROVIDED FURTHER, That nothing in this act contained shall be construed as limiting the rights granted to purchasers or settlers by 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March third, eighteen hundred and eighty-seven, or as repealing, altering, or amending said act, nor as in any manner affecting any cause of action existing in favor of any purchaser against his grantor for breach of any covenants of title.

"Sec. 4. That section five of an act entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,' approved May seventeenth, eighteen hundred and sixty-four, and section seven of an act entitled 'An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes,' approved March third, eighteen hundred and sixty-five, and also section five of an act entitled 'An act making an additional grant of lands to the State of Minnesota in alternate sections to aid in the construction of railroads in said State,' approved July fourth, eighteen hundred and sixty-four, so far as said sections are applicable to lands embraced within the indemnity limits of said grants, be, and the same are hereby, repealed; and so much of the provisions of

section four of an act approved June second, eighteen hundred and sixty-four, and entitled 'An act to amend an act entitled 'An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State,' approved May fifteenth, eighteen hundred and fifty-six, be, and the same are hereby, repealed so far as they require the Secretary of the Interior to reserve any lands but the odd sections within the primary or six miles granted limits of the roads mentioned in said act of June second, eighteen hundred and sixty-four, or the act to which the same is amendatory.

"Sec. 5. That if it shall be found that any lands heretofore granted to the Northern Pacific Railroad Company and so resumed by the United States and restored to the public domain lie north of the line known as the 'Harrison line,' being a line drawn from Wallula, Washington, easterly to the southeast corner of the northeast one-fourth of the southeast quarter of section twenty-seven, in township seven north, of range thirty-seven east, of the Willamette meridian, all persons who had acquired in good faith the title of the Northern Pacific Railroad Company to any portion of said lands prior to July first, eighteen hundred and eighty-five, or who at said date were in possession of any portion of said lands or had improved the same, claiming the same under written contract with said company, executed in good faith, or their heirs or assigns, as the case may be, shall be entitled to purchase the lands so acquired, possessed, or improved from the United States, at any time prior to

the expiration of one year after it shall be finally determined that such lands are restored to the public domain by the provisions of this act, at the rate of two dollars and fifty cents per acre, and to receive patents therefor upon proof before the proper land office of the fact of such acquisition, possession, or improvement, and payment therefor, without limitation as to quantity: PROVIDED, That the rights of way and riparian rights heretofore attempted to be conveyed to the city of Portland, in the State of Oregon, by the Northern Pacific Railroad Company and the Central Trust Company of New York, by deed of conveyance dated August eighth, eighteen hundred and eighty-six, and which are described as follows: A strip of land fifty feet in width, being twenty-five feet on each side of the center line of a water-pipe line, as the same is staked out and located, or as it shall be hereafter finally located according to the provisions of an act of the legislative assembly of the State of Oregon approved November twenty-fifth, eighteen hundred and eighty-five, providing for the means to supply the city of Portland with an abundance of good, pure, and wholesome water over and across the following described tracts of land: Sections nineteen and thirty-one, in township one south, of range six east; sections twenty-five, thirty-one, thirty-three and thirty-five, in township one south, of range five east; sections three and five, in township two south, of range five east; section one, in township two south, of range four east; sections twenty-three, twenty-five, and thirty-five, in township one south, of range four east, of the Willam-

ette meridian, in the State of Oregon, forfeited by this act, are hereby confirmed unto the said city of Portland, in the State of Oregon, its successors and assigns forever, with the right to enter on the hereinbefore-described strip of land, over and across the above-described sections for the purpose of constructing, maintaining, and repairing a water-pipe line as aforesaid.

"Sec. 6. That no lands declared forfeited to the United States by this act shall by reason of such forfeiture inure to the benefit of any State or corporation to which lands may have been granted by Congress, except as herein otherwise provided; nor shall this act be construed to enlarge the area of land originally covered by any such grant, or to confer any right upon any State, corporation, or person to lands which were excepted from such grant. Nor shall the moiety of the lands granted to any railroad company on account of a main and a branch line appertaining to uncompleted road and hereby forfeited, within the conflicting limits of the grants for such main and branch lines, when but one of such lines has been completed, inure, by virtue of the forfeiture hereby declared, to the benefit of the completed line; and the price of all lands affected hereby and hereby restored when in any way sold is hereby reduced to one dollar and twenty-five cents per acre.

"Sec. 7. That nothing in this act shall be construed to waive or release in any way any right of the United States to have any other lands granted by them, as recited in the first section, forfeited for any failure, past or future, to comply with the conditions of the grant."

Whereupon the witness upon cross-examination further testified that the various compilations and maps identified by him were all prepared, except one or two which may show the contrary on the face, since the institution of this suit, for the purpose of being used in this suit. They were compiled to show the facts as shown by the records of the office. Witness testified that the compilations themselves are not of any practical use, and were never of any practical use in the office. He does not remember anything that is especially part of the office records. "Defendants' Exhibit 263" purporting to show the disposition of the even numbered sections intervening the unsold portions of the land grant involved in this suit was prepared specially for use in this case and had no practical use in his office in the administration of the grant, and when he says that some of these documents, speaking generally, are relied upon by his office, he refers to the sources from which these maps and computations have been compiled rather than the maps and statements themselves, and it is largely true that his only knowledge as to the accuracy of these maps and compilations rests upon the fact that he directed how they should be compiled and prepared and knows that the men that did the work had before them the details from which they could have made them accurately, the witness supervising the work as much as he could. He attended to some of the detail work, but as a rule it was done by clerks in the office. It was not possible for him to give a close personal check. In "Defendants' Exhibit 263" he has included any form of selection or

entry that did not require settlement on the land. It was not the intention to say that none of these lands may have been taken for settlement purposes, that was not within his knowledge. The records of his office disclose that quit claim deeds had been used by the Oregon & California Railroad Company in conveying lands that had not yet been patented and such instances of conveyance are not limited to cases where mineral claimants contested the Company's selections or lists and the contest was finally compromised between the mineral claimants and the Company. It is impossible for him to say, from recollection, how many instances he has found where the Company did issue deeds prior to patent outside of lands claimed by mineral claimants. The records show quite a number. The records show that the lands were sold in the ordinary course of events, the deed issued and the patent sometimes subsequently acquired and sometimes not yet acquired. He would not say that these were prior to the receivership in 1885, he does not recollect. Any lands lost by the Act of January 31, 1885, are not considered other than to show them as lost, if shown at all.

Whereupon witness further testified as follows:

"Q. Now, you recall that there was litigation instituted by the United States involving the northern four or five townships on the easterly side of the grant under the act of July 25, 1866, known as the Northern Pacific Overlap case. You recall the fact that there was such litigation?

A. I know there was such a case, yes.

Q. Now, do you not know that, when the Northern Pacific Overlap suit was instituted by the United States, the railroad company gave notice to all parties holding contracts for lands involved in that litigation that no further payments would be received under the contracts until the litigation was terminated?

A. I know only that some people have claimed to have received such notice. I don't know the facts as to the notice having been given.

Q. Well, now, do you not know that there are quite a number of outstanding contracts involving lands that were tied up in that litigation for some time, and which contracts have not been finally forfeited for failure on the part of the purchaser to comply with the conditions of the contracts, and at the same time that those lands are not included in the defendants' answer here as either sold or unsold lands?

A. I remember of a few cases,—I don't think there is quite a large number—where contracts are still open accounts on our books, and where parties claim that they were given some extensions of time on account of the Northern Pacific Overlap cases. Now, I do not recall that there is any showing in the answer of tracts of land that have been sold. The answer is confined to a showing of lands unsold, as I recollect it, and those contracted lands are not in the list of unsold lands."

Whereupon the witness further testified that "Defendants' Exhibits 296 and 297" show whether the con-

tract has been cancelled on the books or not, and show in a column under the heading "Date of closing account in consequence of default" the dates when all contracts that have been closed for default were so closed. So far as these contracts are concerned, they have been forfeited and the lands may have been sold under another contract later on. So far as these contracts are concerned, the lands unless later sold, would appear in the statement of unsold lands. Under another column is shown "Dates of final payment or deed." These dates show that a deed had issued, or that the contracts had been paid in full. Where no date appears in either of these columns the contract is still outstanding, so far as the accounts and records show and the description of the land, contract number, name of contract holder, so far as the Company is advised, are shown in connection with the statements. He cannot tell without a very great deal of research the cases where the purchasers dispute the claim that the lands have reverted to the Railroad Company. On pending contracts that are in default, the exhibit shows which of these pending contracts is in default, where the account is still open on the books. Under the heading in the two columns "Amount unpaid when default occurred" and "Date of default" that information is given. Then under double column "Payments made after default occurred. Date—Amount" it shows what has been paid subsequent to the date shown in the column headed "Date of default." By taking this exhibit and referring to these items which show default and also the column showing date of final pay-

ment or deed, as well as "Date of closing account in consequence of default," one would have all contracts as to which default has occurred and where the rights of the purchaser and the Railroad Company have not yet been settled; that is, if there is no entry under the heading "Date of closing account in consequence of default" and likewise under the heading "Date of final payment or deed" then that means that the contracts are in default and if nothing appears under the heading "Payments made after default occurred" that means that the default is still continuing. None of these instances are included in the pleadings in this case as unsold lands. The donation land claims were taken up before this grant was made, and that is the reason for the resulting loss within place limits. Donation land claims were a matter of record in 1866.

Witness further testified that the records and letter files of the Oregon & California Railroad Company which survived the San Francisco fire of 1906, and heretofore produced at the request of counsel for the Government, were such records and files and were found in the form produced when he entered the office. That he was present when Mr. Eberlein testified and remembers that Eberlein explained that "Government's Exhibit 115," being correspondence in which the assignability of that entire grant, with right of lieu selection in favor of the assignee was discussed, belonged to other files than the Oregon & California Railroad Company. Witness did not intentionally put any of the files belonging to any other grant in the Oregon & California Rail-

road Company files. This exhibit had inadvertently gotten in there and was there when the files were gotten out and so far as he knows was there during all the time that he had had custody of those files. Witness does not recall definitely relating to the sale to Franklin Martin in December 1908 of 160 acres of the granted lands at $2.50 per acre. The case was terminated shortly after witness took charge of the office and his action in connection with the matter was largely in accordance with advice of the law department, which was thoroughly familiar with the facts. He does not recall where the land was situated and would have to refer to the files in the case in order to say much concerning it, beyond the fact, as he has heretofore testified, that that was a sale which had been entered into pursuant to settlement of a law suit. It is his recollection that these lands are involved in this suit now pending. Referring to the sale made in June 1910 to Roy Minkler of 80 acres at $22.00 per acre, that was a suit instituted for Minkler by A. W. Lafferty, in the Federal Court sitting at Tacoma and is the suit referred to in the bill of complaint in this case and that was the suit that was compromised. He admits that there is a small percentage of agricultural lands involved in this suit but does not remember whether his previous testimony was confined to a statement that he would have sold agricultural lands but for this suit. He presumes he would have sold timber lands had it not been for this pending suit.

Whereupon witness being recalled on behalf of defendants on direct examination testified as follows:

Mr. Fenton: Q. Mr. McAllaster, you may state, if you will, whether or not you have examined the corporate records of the Oregon Central Railroad Company of Salem, the Oregon Central Railroad Company of Portland and the Oregon and California Railroad Company in the custody of the secretary of the Oregon and California Railroad Company, and as a result of such examination of these corporate records, you are able to state succinctly what you find with reference to the financial operations of these companies from the beginning down to the period covered by your investigation?

A. Yes, I made such examination of these corporate records while I was in Portland last October, and I found the result as follows:

"The Minute Books of the Oregon Central Rail-"road Company (East Side) and the Oregon Central "Railroad Company (West Side), and the Oregon and "California Railroad Company show certain moneys to "have been obtained towards the construction of the "road, as follows:

"The East Side Company was incorporated April "22, 1867, and immediately thereafter let a contract "to A. J. Cook & Company for construction of the "line for one hundred and fifty miles south from Port-"land. Subsequently this contract was amended and "later another contract was entered into with Cook and "Company for construction from the 150th mile post "south to the Oregon State line. All of these contracts "were eventually assigned by Cook & Company to Ben

"Holladay and Company, and from time to time cer-
"tain shares of capital stock and certain mortgage bonds
"were delivered to either Cook & Company or Ben Hol-
"laday and Company.

"On March 28, 1870, the East Side Minute Book
"shows a proposition from Ben Holladay and Com-
"pany to the effect that such Company would turn over
"to the East Side Company all stocks and bonds it
"held, all the completed and uncompleted railroad lines,
"all rolling stock and other property, all mills, ma-
"chine shops and their contents, all live stock, imple-
"ments and property owned by or standing in the name
"of Ben Holladay and Company which had been ac-
"quired or were intended for use in construction
"and operation of the railroad, in consideration
"of which the Railroad Company was, within
"two years, to pay the full amount of money which Ben
"Holladay and Company had expended, and to pay all
"liabilities which had been incurred by Ben Holladay
"and Company in connection with the construction of
"the road, or defending the corporate rights of that
"railroad, which amounts were supposed to aggregate
"between $800,000.00 and $1,000,000.00.

"Coincidentally there was received by the East Side
"Company from the Oregon and California Railroad
"Company a proposition to purchase the entire prop-
"erty in consideration of the Oregon and California
"Railroad Company assuming the payment to Ben Hol-
"laday and Company of the $1,000,000.00, or there-
"abouts, above referred to.

"Wherfeore it appears that there had actually been "expended by Ben Holladay and Company about "$1,000,000.00, which had gone into the construction of "twenty miles of completed road, and of a considerable "grading and partial construction beyond the end of "the completed line, and in the purchase of equipment "for operating the completed twenty miles, and equip-"ment of all kinds for railroad construction.

"The Minute Books of the West Side Company "show that stock was authorized to be sold on certain "terms, and that from time to time calls were made up-"on stock subscribers for cash payment of percentages "of their subscriptions; also that subscriptions were re-"ceived of real estate, for aid in the construction of the "road; also that contracts were let with S. Coffin and "S. G. Reed & Co. for construction and that some pay-"ments were made on account of those contracts, but "the books are not clear as to the amounts paid; also "that on or about September 8, 1880, certain construc-"tion work had been done by the Northwestern Con-"struction Company, amounting in value to $20,893.92, "against which the West Side Company had an off-"setting bill for freight transportation amounting to "$7887.40, leaving $13,006.52 unpaid.

"From the West Side Company's Minute Book the "folloging statement has been compiled:

"Feb. 9, 1872,	page 228, — Borrowed	
"	from London Syndicate	
"	by depositing $4,395,000	
"	first mortgage bonds as	
"	collateral	$1,000,000.00

"Apr. 30, 1876, page 306,—Second Mort-		
" gage bond issue.....		300,000.00
"Oct. 6, 1880, page 515,—Amount of cash		
" " paid in on capital stock sub-		
" " scriptions	$	47,531.17
" " page 521,—Net earnings		
" " from operation of the road.		25,250.00
" " Value of construction work		
" " done by Northwestern Con-		
" " struction Company and		
" " paid by freight transporta-		
" " tion		7,887.40
" " Value of construction work		
" " done by Northwestern Con-		
" " struction Company, unpaid.		13,006.82
" " Individual subsidies appar-		
" " ently partly in cash and		
" " partly in real estate sub-		
" " scriptions towards the fi-		
" " nancing of the road.....		95,466.24
" " Cash received from land		
" " grant sales		4,934.69
" " Rental due from Western		
" " Oregon Railroad Company		1,750.00
""		
" Total		$1,532,484.13

"all of which was unquestionably applied, or intended "to be applied upon the construction of the railroad, "and constituted the actual value which the Oregon and "California Railroad Company obtained when it took "over the West Side Company's property.

"In addition, the Oregon and California Railroad "Company, in taking over the West Side Company's "property, assumed the following liabilities:

"Amounts borrowed by West Side Company from O. & C. R. R. Co to pay interest on bonds and for other purposes	$120,997.40
Interest owing on two notes for $1,000,000.00	612,796.34
Interest owing on second mortgage coupons	97,230.00
Total	$831,023.74

"from which it would appear that at the "time Oregon and California Railroad "Company acquired the East Side there "was an actual investment of $1,000,000.00 "and at the time O. & C. R. R. acquired "the West Side Company there was an ac- "tual investment of $1,532,484.13

"Total investment	$2,532,484.13
"Accrued interest charges	831,023.74

"The accrued interest charges, the $800,000.00 sec- "ond mortgage bond issue and the $1,000,000.00 bor- "rowed from the London Syndicate, and the balance due "the Northwestern Construction Company were subse- "quently taken care of by O. & C. R. R. Co.

"Concerning the showing that on or about January "31, 1881, the stockholders made payment in full for

"the then remainining capital stock of the Oregon and "California Railroad Company, amounting to $1,759,- "200.00, beg to advise that the records of the minutes "of meetings of Boards of Directors and stockholders of "the Oregon and California Railroad Company show as "follows, book and page reference being in the typewrit- "ten copies of the original records which have been certi- "fied to by Mr. W. D. Fenton, Secretary:

"Prior to February 1, 1881, there was outstanding "capital stock amounting to $20,000,000.00, held by the "following persons:

"R. Koehler, Trustee	$19,999,500.00
"R. Koehler	100.00
"C. H. Lewis	100.00
"P. Schulze	100.00
"J. N. Dolph	100.00
"C. A. Dolph	100.00
	$20,000,000.00

"There was outstanding indebtedness as follows:

"Outstanding first mortgage bonds O. C. R. R. Co., dated April 14, 1870	$10,950,000.00
"Outstanding West Side Company first mortgage bonds, amounting to $4,- 395,000.00, which were pledged as collateral security for two notes amounting to	1,000,000.00
"Outstanding second mortgage bonds West Side Company	800,000.00
"Note due Northwestern Construction	

" Company on account of construction	
" work done for West Side Company..	13,006.82
"Interest due thereon	520.27
"Interest owing on the two notes for	
" $1,000,000.00	625,296.35
"Balance of interest owing on the second	
" mortgage bonds West Side Company	93,490.00
"Outstanding indebtedness of the West-	
" ern Oregon Railroad Company which	
" O. & C. R. R. Co. had assumed as the	
" purchase price of that line.....$	1,520,564.05
"Total of such outstanding indebtedness.$	14,502,877.49

"(a) Holders of all of the 7% bonds of April 14, "1870, except $32,800.00 supposed to have been lost or "destroyed, and $30,700.00 held in the congressional land "grant sinking fund, also

"(b) The trustees of the mortgage of April 15, "1870, covering the railroad,

"(c) The trustees of the trust deed of April 15, "1870, covering the land grant,

"(d) All the stockholders:

"that the capital stock be reduced to $1,759,200.00, and "that first mortgage bonds aggregating $2,000,000.00 "be issued to apply in part upon liens of the West Side "Company, just bought in, and in part upon liens of "the Western Oregon Railroad Company, just bought, "and to provide a fund for the general purposes of the "company.

"In connection with the stockholders meeting held "February 1, 1881, it is shown that the stock had been "transferred so that the holdings on that date were,—

	2744	
"R. Koehler, Trustee.....	199,943.17592	shares
	6488	
"R. Koehler	11 17592	"
	6488	
"C. H. Lewis	11 17592	"
	6488	
"P. Schulze	11 17592	"
	6488	
"J. N. Dolph	11 17592	"
	6488	
"C. A. Dolph	11 17592	"
"Total	200,000.00	shares

"It was shown that the capital stock of $20,000,000.00 "was wholly unpaid, and the holders were unable to pay "a greater assessment than $1,759,200.00, and that if "the stock was reduced to that amount the holders pro- "posed to pay the same in full, and therefore the reduc- "tion was ordered made.

"It is shown the proceedings authorizing the issue of

"$2,000,000.00 six-per-cent bonds, as a superior lien to "that of the mortgage and deed of trust of April 15, "1870.

"It is recited the outstanding indebtedness as herein- "before given.

"The proposition is shown that upon the "surrender of the two West Side notes "for	$1,000,000.00
"and the surrender of the first mortgage "bonds of the West Side Company...	4,395,000.00
"and the surrender of the second mortgage "bonds of the West Side Company...	300,000.00
"and the surrender of the interest coupons "thereon, amounting with interest to..	93,490.00
"and the full satisfaction of the Western "Oregon Railroad Company mortgage	1,520,564.05
"and the surrender of the Northern Con- "struction Company's note for.....	13,006.82
"and upon the stamping of the first "mortgage bonds and coupons (ex- "cepting those lose and those held in "the Congressional land grant sink- "ing fund), that the Oregon and "California Railroad Company will "thereupon pay to the holders of in- "debtedness in such proportion as "may be agreed upon, cash.....	$93,755.00
"and deliver in such proportion as	

"may be agreed upon new first mort-
"gage bonds ($2,000,000.00 issue).. 1,700,000.00
"and for the balance of said indebted-
"ness will credit as payment for re-
"duced capital stock upon assign-
"ments from holders of indebtedness. 1,759,122.95

"the total of said indebtedness being. $3,552,877.95

"At a stockholders meeting held on February 2, "1881 it is shown that the stockholders then were:

"R. Koehler, Trustee	$1,758,700.00
"R. Koehler	100.00
"C. H. Lewis	100.00
"P. Schulze	100.00
"J. N. Dolph	100.00
"C. A. Dolph	100.00
Total	$1,759,200.00

"It is evident that the proposed arrangement had "been carried out and that therefore the holders of the "various items of indebtedness, who apparently were the "German bond holders and who were also apparently "the actual owners of all of the outstanding stock, had "in effect appropriated $1,759,200.00 of the amounts "coming to them in the payment of the indebtedness, "and used the same as their payment in full to the Rail-"road Company for that amount of capital stock.

"The same result as to outstanding indebtedness and "capital stock would have been obtained if the German

"bond holders, being also the stockholders, had paid "in cash the $1,759,200.00 and the Railroad Company "had then used that money, together with the $1,700,- "000.00 of bonds and the $93,755.00 of cash to satisfy the "$3,552,877.49 of indebtedness. It is immaterial wheth- "er the German bond holders and stockholders, being "identical, were out of pocket by failing to receive $1,- "759,200.00 of the indebtedness due them, or by paying "into the Company's treasury that amount of money out "of their own pockets and subsequently receiving it back "again as payment of the indebtedness due them."

Whereupon witness further testified that from these books, or corporate records of these Companies he had prepared a statement showing in a general way the financial operations of the Oregon Central Railroad (East Side) and the Oregon Central Railroad (West Side) and the Oregon & California Railroad Company, as gathered from the records of the meetings of the stockholders and directors of the Company, and being shown "Defendants' Exhibit 380" testified that he prepared that statement and that it is an abstract from the records of the meetings of the directors and stockholders of the Companies named and is correct according to the records; that he has had experience as an accountant and bookkeeper sufficient to justify him to make this statement and compilation.

Whereupon defendants offered in evidence "Defendants' Exhibit 280" which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as

such.

Whereupon the witness produced a certified copy of the patent issued by the United States to the Oregon & California Railroad Company, which includes the lands described in contract 5394, being the third item of Exhibit No. 9 of the answer and by consent of the parties the same was read into the record, omitting descriptions and is as follows:

"The United States of America.
"To all to whom these presents shall come, Greeting:

"Whereas by the Acts of Congress approved July "25, 1866, June 25, 1868, and April 10, 1869, to aid in "the construction of a railroad and telegraph line from "Portland in Oregon, thence southerly through the Wil- "lamette, Umpqua and Rogue River Valleys to the "Southern boundary of Oregon. Authority is given to "the Oregon and California Railroad Company of Ore- "gon, a corporation existing under the laws of the State " 'to construct a railroad and telegraph line' under cer- "tain conditions and stipulations as expressed in said "Acts and provision is made for granting to the said "Company every alternate section of public land desig- "nated by odd numbers, to the amount of ten alternate "sections per mile on each side of the said railroad on "the line thereof and within the limits of twenty miles "on each side of said road, not sold, reserved or other- "wise disposed of by the United States, and to which a "pre-emption or homestead claim may not have attached "at the time, the line of said road is definitely fixed.

"And Whereas, it is further enacted in said section "that when any of said alternate sections or parts of "sections shall be found to have been granted, sold, re- "served, occupied by homestead settlers, pre-empted or "otherwise disposed of, other lands designated as afore- "said shall be selected by said Company in lieu thereof, "under the direction of the Secretary of the Interior in "alternate sections designated by odd numbers as afore- "said nearest to, and not more than ten miles beyond "the limits of said first named alternate sections.

"And Whereas, official statements from the Secre- "tary of the Interior have been filed in the General Land "Office, that Commissioners appointed by the President "under the provisions of the fourth section of said Act "of July 25, 1866, have reported to him that the said "Oregon and California Railroad and Telegraph Line "commencing at a point in East Portland in the County "of Multnomah, State of Oregon, and ending at a point "on the boundary between the States of Oregon and "California where it joined the California and Oregon "Railroad a distance of three hundred and sixty miles has "been constructed and fully completed and equipped in "the manner prescribed by said Act.

"And Whereas, that portion of said road lying be- "tween the city of Portland, Oregon, and the town of "Roseburg in Township 27 South, Range 5 West, a "distance of one hundred and ninety-seven miles was "completed within the time prescribed by the law, and "the balance of the road was completed after the expira- "tion of such time. And Whereas certain tracts of

"land have been selected by the duly authorized agents "of the Oregon and California Railroad Company as "shown by such agent's original lists of selections ap- "proved by the local land officers and now on file in this "office. And Whereas said tracts of land lie within the "indemnity limits of said grant and are particularly de- "scribed as follows, to-wit:"

(Descriptions omitted.)

"The said tracts of land as described in the fore- "going make the aggregate area of ninety-seven thou- "sand nine hundred and twenty-nine acres and sixty- "seven hundredths of an acre (97,929.67).

"Now, Know Ye, that the United States of Amer- "ica in consideration of the premises and pursuant to "the said Acts of Congress have given and granted, and "by these presents do give and grant unto the said Ore- "gon and California Railroad Company of Oregon, and "to its assigns all the tracts of land selected as afore- "said and described in the foregoing, yet excluding and "excepting from the transfer by these presents 'All Min- "eral Lands' should any such be found to exist in the "tracts described in the foregoing but this exclusion and "exception according to the terms of the statute 'shall "not be construed to include coal and iron lands.'

"To have and to hold the said tracts with the appur- "tenances unto the said 'Oregon and California Rail- "road Company of Oregon, and to its assigns forever "with the exclusion and exception as aforesaid.

"In testimony whereof, I, Benjamin Harrison, Pres-

"ident of the United States of America, have caused "these letters to be made patent, and the seal of the Gen- "eral Land Office to be hereunto affixed.

"Given under my hand at the City of Washington, "this the third day of March in the year of our Lord, "one thousand eight hundred and ninety-three, and of "the Independence of the United States the one hundred "and seventeenth.

"(Seal)

"By the President Benjamin Harrison,

E. Macfarland, Asst. Secretary."

Whereupon on cross-examination witness further testified that this statement of the financial affairs of these Companies is based strictly upon what appears in the minute books and other books of these corporations; that the question whether Holladay had accepted $1,000,000 or $800,000, or any other particular sum is based upon the fact that he so contended in the reorganization of 1870, and that the Company, by accepting his proposition, virtually conceded it and it so appears in the minutes of the Company relating to that transaction, and he has no way of knowing from these books whether Holladay did actually advance that money himself or whether he had borrowed it and then repaid it out of the bond issue of 1870 and there is no way for him to know whether that did or did not occur, beyond what is set forth in the minute books and there is nothing in the minute books showing how Holladay expended the money that came into his hands, but simply the fact

that the money did come into his hands and was exhausted and that is the only thing that the minute books show concerning it. The minute books do not show or for the main part, the books do not show how he expended the money, they do not show specifically that it was for the purpose of construction. They do not show it in detail.

Whereupon the defendants offered in evidence in connection with the testimony of witness the minute books referred to by him and asked leave to withdraw the same, which was assented to by the Government.

Whereupon, WILLIAM HOOD, called as a witness on behalf of defendants, being duly sworn, testified that he is Chief Engineer of the Southern Pacific Company and its leased lines; was educated as a civil and railroad engineer at Dartmouth College. He has been connected with the construction of all of the Southern Pacific Company lines between Ashland, Oregon, and San Antonio, Texas, and Ogden, Utah, excepting what was built prior to 1867, and has been continuously in the service of the Central Pacific Railway Company, Southern Pacific Railroad Company, and other lines now leased to and operated by the Southern Pacific Company, since May 3, 1867. He was assistant engineer for some time, then assistant chief engineer for a certain period, and then chief engineer for the Central Pacific Railway Company and the Southern Pacific Railroad Company, and as such Chief Engineer or otherwise of the Central Pacific Railway Company was intimately connected with the construction of the road between Roseville Junction and Ashland, known as the

land grant road of the California and Oregon Railroad Company in California, under the Act of Congress of July 25, 1866, and known in Oregon as the Oregon and California Railroad Company, from the state line to Portland, under the same grant, from Marysville to Tehama, and somewhat connected with it from Tehama to Redding, and closely connected with it and actually in charge from Redding to Ashland, Oregon. He recalls an agreement of date October 11, 1886, between the Central Pacific Railroad Company, Pacific Improvement Company, and Southern Pacific Company, known as "Exhibit 1" to the printed joint and several answer of the Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage in this suit, and has seen a copy of same to refresh his memory recently. At the time this agreement was put in force it was handed to him to read for his guidance in connection with the construction of the railroad. He would not remember at this time its dates, or other matters of that description. His remembrance is that he saw a duplicate belonging to the Pacific Improvement Company, which was an executed document, as he remembers. He constructed that portion of the road between Delta and Ashland under this agreement. Roseville Junction to Lincoln is 10.4 miles; Lincoln to Wheatland, 11.1 miles; Wheatland to Yuba, which was then a local name on the railroad immediately south of the Yuba River at Marysville, 10.1 miles, and it should be understood that he had no connection with this construction, but he has compiled this from his office records, which office records he has

renewed since the fire. The methods by which payments were made as the work of construction progressed on that portion of this line constructed by him, was that when a certain number of miles had been built, any convenient number of miles, a certificate would be issued signed by the President of the road and himself, certifying that the Pacific Improvement Company had completed a certain number of miles, and giving initial and terminal points of this certain number of miles—that was from Delta to Ashland, a distance of 132.387 miles. These certificates that Pacific Improvement Company had constructed certain mileage and was entitled to such and such compensation, were issued by the president or vice president in his absence, and by himself as chief engineer. He was an officer of the Central Pacific Railroad Company. The officers who signed these certificates were officers of the Central Pacific Railroad Company. He does not remember occupying at that time any position with reference to the Central Pacific Railroad Company other than chief engineer. As such officer, as its chief engineer, he constructed the road from Delta to Ashland. The company abandoned something like a mile and a half of track south of Ashland, which had been constructed by Oregon and California Railroad Company, and built an entirely new road to correspond, situated somewhat to the eastward of this abandoned road, so that the Central Pacific Railroad Company constructed beyond the Oregon line the distance from the State line between Oregon and California to Ashland, that is, the Pacific Improvement Company con-

structed, for the Railroad Company, between the State line and Ashland. Whether it was the Central Pacific Railroad or the Oregon and California Railroad Company, he could not tell. As Chief Engineer of the Central Pacific Railroad Company he had charge of all that construction, although the contract was in the name of the Pacific Improvement Company It was under this contract, said Exhibit No. 1, his position as Chief Engineer caused him to be in charge of the construction to see that it was done satisfactorily.

Whereupon, upon cross-examination, witness further testified that the Pacific Improvement Company was, in effect, the contractor, and he was in charge of their work in as intimate a degree as he would be in any case in charge of the work of a contractor, which would mean that he was responsible for the location of the road, its grade system, its curves, and every detail; the contractor, Pacific Improvement Company, building it as directed, and under his immediate supervision. He performed a similar service quite frequently where the Pacific Improvement Company was the contractor. He knows that Huntington, Crocker, Stanford and Hopkins, in a general way, had the reputation of controlling the Pacific Improvement Company, but he did not know. He knew that these were the men who directed and controlled its affairs—he having no personal knowledge of the stockholders. He knew in a general way that they controlled and directed the affairs of that corporation. A great deal of the contract work of the Southern Pacific Company and the so-called constituent companies of the

Southern Pacific system, was done in the name of the Pacific Improvement Company. The cash payments to men on the pay rolls for the construction of the California Line from Delta to the northerly line of the state, were made by the Pacific Improvement Company, excepting his salary and expenses. The contract provided that his salary and expenses should be paid by the Central Pacific Railroad Company. He does not know how the Pacific Improvement Company was paid by the Central Pacific Railroad Company other than the contract, and he is not clear in his remembrance of that in detail. He knows that they were authorized to get paid by his certificate and the certificate of the president. He remembers in a general way that this contract provided that the Pacific Improvement Company should be paid for constructing the railroad from Delta to the northern boundary line by 80,000 shares of the capital stock of the Central Pacific Railroad Company, and $4,500,000 of bonds. His certificates, however, did not take that into account, they simply certified to the completion of the road in sections, according to mileage. He does not know how they apportioned these payments. He does not remember in detail that a similar contract was entered into between Pacific Improvement Company and the Oregon and California Railroad Company for the construction of the road from Ashland to the southern boundary of Oregon, but he does remember clearly that he certified as to the completion of the road in that district, the same as he did south of the State line, and must have had authority for it. The certificate was

made, as he remembers it, not addressed to any one, simply "The Pacific Improvement Company has completed," etc., etc., specifying the distances; was signed by the president and himself, and the Pacific Improvement Company presented that to the proper company for payment. He is not clear who was president of the Central Pacific at that time. It may have been Charles Crocker; he paid very little attention to those things. The executive officers of that company have changed a number of times in its history, and he could not remember as to the Oregon and California, who was president in 1887. He does not remember of being consulted by the president of the Central Pacific Railroad Company, or any of its officers, with reference to the Oregon and California Railroad property prior to this time, and he did not inspect the road, or its general properties, before the Central Pacific people became interested in the Oregon and California Railroad Company or entered into any contract with reference to it. He did not make any inspection of the Oregon and California railroad, or any part of its railroad, prior to the time that he performed this work in connection with construction. He does not know when the Pacific Improvement Company acquired its holding of the capital stock of the Southern Pacific Company, and has no knowledge whatever as to the ownership by the Pacific Improvement Company of Southern Pacific Company stock. He has no knowledge of the details of any common interest the Pacific Improvement Company, and the Southern Pacific Company, and the Central Pacific Company, or the other

constituents of the so-called Southern Pacific Railroad System, or that they were closely related, or controlled by the same set of men, except such as any other citizen would have through newspapers, and his knowledge would be about as reliable as that of any other citizen in those respects. He had no occasion to know anything about who controlled or directed the affairs of the company, referring to Huntington, Crocker, Stanford and Hopkins. He would be notified that a road was to be constructed; he would see a contract, like the one testified to, to guide him; he would then direct the construction; he would not receive any instructions from any one; they never gave him any, and he controlled the engineers on construction, the same as if they were on his own road, although they were not. He was assistant engineer in 1867, and was not appointed to that place, but was employed. He was appointed assistant chief engineer of the Southern Pacific Railroad Company, and thereafter of the Central Pacific Railroad Company, by Charles Crocker. He was appointed or elected, which ever it was, chief engineer of the Southern Pacific Company, which covered everything, so to speak, ex-officio, on account of the lease, but does not remember whether it was an appointment or an election. If it was an appointment, it was by Charles Crocker, as he remembers that Crocker was active here at that time, whatever position he may have held. His relations with Charles Crocker and Leland Stanford, and C. P. Huntington, and Charles F. Crocker, and Mark Hopkins, and D. D. Colton, were entirely relations with

them as railroad officers, that is, as president, vice president, etc., treasurer, and the like of that, directors of the railroad corporations and of the Southern Pacific Company. He had no relations whatever with these men concerning the Pacific Improvement Company, or any other company, excepting as officers of the railroad company. His relations with the Pacific Improvement Company were entirely through its secretary, who was an employe.

"Q. Yes, but you are now stating the nature of your relations with these men, Mr. Hood, whereas I want you to state whether or not the same men did not, in a general way, control and direct the affairs of one company that also did of the others—of one railroad company, of all railroad companies, and of the Southern Pacific Company?

A. I knew that officially."

Whereupon the witness further testified that he did not know of his own knowledge, that these same men controlled and directed the affairs of the Pacific Improvement Company. He dealt with the secretary of the Pacific Improvement Company exclusively, frequently from 1888 on. If it had been a practical question in the administration of his affairs to go to the man who controlled and directed the affairs of the Pacific Improvement Company, he would have gone, and did go to the secretary of Pacific Improvement Company, who was a salaried employee, like almost any secretary. He would say that he was dealing exclusively with the secre-

tary of the Pacific Improvement Company. He recalls at certain dates that for some time J. H. Strowbridge was president of the Pacific Improvement Company, and F. A. Douty was secretary, and he remembers that was the state of the case while the road was being built from Delta to Ashland, although he may be mistaken as to the president, but he does know that Strowbridge was for a considerable period president, and Douty was secretary of Pacific Improvement Company, and knows that he went to Douty on business between the Central Pacific Railroad Company and the Pacific Improvement Company. It is difficult to remember specifically how many contracts there were between Pacific Improvement Company and any of the constituent companies of the Southern Pacific Company. He can remember in general what roads they built, but could not give the dates of contracts or terms. For instance, they built the road from Shingle Springs to Placerville, and he thinks the road from Mojave to Needles. He was not chief engineer of that road, and that is why he says he thinks so. He was assistant chief engineer of that road, it was the Southern Pacific Railroad. He thinks that the Pacific Improvement Company built from Indio to Yuma, and he could probably, if he took time, recall other construction. As he recalls, in all the contracts that he has examined for the construction of railroad by the Pacific Improvement Company, payment was to be made in either capital stock or bonds of some of the railroad companies now constituting the Southern Pacific System; the amount of capital stock or bonds

was generally, but not always defined. When the amount was not defined, it was determined by the cost of the road, and a small percent, sometimes five, sometimes ten, for administration service and possibility of loss in marketing securities—that is, the contract would provide that the Pacific Improvement Company should construct the road and it should receive the actual cost, with five or ten per cent for administration. He thinks the contract provided that, but at any rate he remembers instances where that was the way that payments were actually made. This was a good while ago and he don't remember always in detail. He performed exactly the same service as to that part of the railroad situated in the State of Oregon south from Ashland, as he did to that part of the railroad in the State of California from Delta north—his action and certificates were identical. From Delta to Ashland, he was shown the agreement for his guidance, and instructions were given when to commence work. That was really all the instructions he got. As to that portion between the State line and Ashland, his recollection is not clear, except as to one point, and that is, he kept going on with his work. He did not build south from Ashland at the same time that he was building north from Delta. He built straight north through to Ashland continuously and laid track the same way. The last track laid was right in the north end of Ashland yards—in Ashland. That included a new line for a mile and a half south from Ashland, in place of that which had formerly been constructed and abandoned; instead of building to the south end of the line as originally

constructed a mile and a half, or thereabouts, south of Ashland, he built to Ashland direct. He does not know, only in a general way, who built that mile and a half of track that was abandoned, or when it was built, but understood it was a portion of the construction to Ashland from the north. It was not a part of the construction that was commenced under the new management of 1887, and abandoned. To make it clear—in addition to building a mile and a half of track south of Ashland, the people who did that had also started isolated pieces of construction between Ashland and the State line. For instance, they had partially built a tunnel at a place known as Buck Rock. They had occasionally built a little piece of grade. They had commenced and built quite a little of the present Summit tunnel near Siskiyou station, which portion of the Summit tunnel he fixed up, and completed the tunnel. That portion of the Summit tunnel which he mentions at Siskiyou station, which was built by his predecessors, is the only part of their work south of Ashland which he utilized. He could give no details as to the organization which did this work. He did not certify in these certificates as to the amount of cash that should be paid. The certificates simply stated that the Pacific Improvement Company had completed so many additional miles of railroad, from survey station to survey station, blank miles; that is, it specified the miles. They were signed by the president of the road, or a vice president, and himself. That was the last he would see of it. They did not state the amount of money that the contractor was entitled to. He does

not know what was the cost of construction of the railroad from Ashland to the southern boundary line of Oregon. He would be on the work during the period of construction from seven to ten days at a time; perhaps in the next week or ten days he would be as far south as San Diego, and would then swing back and stay there another week or ten days. He kept in very intimate touch with the actual work of construction. He commenced construction from Delta sometime after the spring of 1884. His remembrance is that the work commenced in this way, by spending a little money getting some bridge foundations excavated, and the masonry brought up above flood mark, and so on, ready for fast construction, and that construction went on that way for some little time, and then finally a real force was put to work. This was shortly after the summer of 1884, and he would think it was about the fall that they went to work more in earnest, that is, north from Delta. In addition, he would say that they had done previous to that time some isolated pieces of work north of Delta; he is speaking now of the way the work went on, not the continuous railroad. There was some work done in isolated places along the proposed line of railroad prior to the execution of this contract of October 11, 1886. There was some work done north of Delta in a small way, in advance of the track here and there, during the summer and fall of 1883. Then they stopped entirely the fall of 1883, at which time the track was at Delta. In fact, the track was a mile or two north of Delta, and they recommenced in a small way, with bridge founda-

tions, he thinks, in the fall of 1884, and later commenced more vigoriously somewhere in the fall of 1884, or the spring of 1885. He is speaking now regardless of any documents. The Pacific Improvement Company was contructing this railroad at that time, that is, was actually doing the work, and his remembrance is that the final written agreement was made retroactive with respect to this work; that was his understanding at any rate. The Company was paid on that basis. The Pacific Improvement Company had, in any event, done some portion of this work of construction prior to October 11, 1886, and they are the ones who paid the bills. He could only state in a general way the amount of work that was done in that way prior to October 11, 1886. The track was laid a mile or two beyond Delta, north of it, in the summer of 1883, and up to Christmas or thereabouts, there was considerable work done north of Delta, in the way of grading at isolated spots. The work then stopped entirely for quite a period and was commenced again in isolated spots in a small way, he thinks in the spring of 1884, possibly in the next year, he could not be positive now; and the work then went on faster in 1885. The Pacific Improvement Company paid all money to the laborers and others, paid every one but him. There was a great deal of construction done in 1886 north of Delta, and the road was finally completed to Ashland in December, 1887. He thinks the road on January 1, 1887, had the end of the track somewhere near where Weed station is now, a little north of Mt. Shasta—a little north of the summit. The track

was at Igerna, or thereabouts, on January 1, 1887. Igerna is about 57 miles from the State line, and it is about 26 miles from Ashland to the southern boundary of Oregon. As he remembers it, the railroad was constructed and completed during the year 1887 from Igerna to Ashland. His forces were scattered over the line from Igerna to and including Siskiyou Summit tunnel on the first day of January, 1887, and on that date the track had been completed to Igerna, but a very great amount of work had been done north, but he could not say what per cent or proportion of the total work had been done north of Ignera before January 1, 1887, but would simply say that the grading and masonry forces and tunneling force had been scattered over the distance from Igerna to Ager, which is about 40 miles, at off and on points, and forces were also at work or about to commence work on the Siskiyou Summit tunnel, and the tunnels north of that point. The Summit tunnel was situated in Oregon, and he is not clear whether he commenced or was about to commence work on it January 1, 1887, but his remembrance is that he was about to commence work on it. He remembers going up there and finding about four feet of snow about that time, along with Strowbridge, who was, he thinks, president of the Pacific Improvement Company, and a force was sent on there to the tunnel promptly thereafter. It is impossible for him to say whether it was before or after January 1, 1887, that the force actually commenced work on the Siskiyou Summit tunnel in Oregon. The first work that was done in Oregon by the Pacific Im-

provement Company forces, outside of engineering work, was on the Siskiyou Summit tunnel and its approaches, and that commenced, as nearly as he can recollect, somewhere about January 1, 1887.

Whereupon, upon redirect examination, the witness further testified:

Q. Mr. Hood, in order that you may refresh your memory and make any explanation you may desire, I call your attention to the fifth clause in this agreement of date October 11, 1886, being Exhibit 1 of the answer, and under which you, as chief engineer of the Central Pacific Railroad Company constructed the line from Delta to the State line between California and Oregon, which reads: "Fifth. That the said Pacific Improvement Company shall and will repay to the said Central Pacific Railroad Company within one hundred and twenty days from the date thereof all sums of money with interest thereon, at the rate of six per cent per annum heretofore by the said railroad company expended upon that portion of its aforesaid line of Railroad and Telegraph Line lying north of Delta, and that if said railroad company has not fully paid all the costs and expenses incurred as aforesaid, the said improvement company will assume the whole thereof and will upon demand pay off and discharge the same, or that if the said railroad company is compelled to pay the same or any part thereof the said Improvement Company will within one hundred and twenty days after notice thereof, repay to the said railroad company the full amount of any such payment or payments, with interest at the

rate aforesaid." And referring to same now, isn't it true that, prior to the execution of this contract of October 11, 1886 (Exhibit 1 of the answer) the Central Pacific Railroad Company had done construction work from Delta north, under your supervision as chief engineer—you had done it yourself, in fact—for the Central Pacific Railroad Company, and that this fifth clause in this agreement was to cover that?

A. Well, that is my general remembrance of it. You understand that absolutely the Pacific Improvement Company organization paid out these moneys—these advance moneys that you speak of. Whether they did it acting, for instance, for convenience, for the Central Pacific Railroad Company or not, who had no such organization, I could not tell you at this late date. But, as a matter of fact, the Pacific Improvement Company paid the payrolls and the material bills. Now, if they did it for the Central Pacific Railroad Company and immediately were reimbursed therefor, as agents, I am simply in ignorance of it—don't know anything about it.

Q. You remember the fact, though, that physically there was construction north of Delta before the date of this agreement of October 11, 1886?

A. Yes, surely; and we all considered it retroactive; and I know that actually the Pacific Improvement Company organization paid the money, perhaps as agents of the Central Pacific—I am in ignorance of that; don't know anything about it.

Q. You constructed, as chief engineer or assistant

chief engineer, roads for the Central Pacific Railroad Company and the Southern Pacific Railroad Company long before there was any Pacific Improvement Company?

A. Oh, yes.

Q. Or any Southern Pacific Company?

A. Yes.

RE-CROSS EXAMINATION.

Q. Well, now, prior to the organization of the Pacific Improvement Company, what company was the contractor that the Central Pacific Railroad Company dealt with, and the Southern Pacific Railroad Company?

Q. Well, I will say, what company or individual?

A. I think the Pacific Improvement Company was organized—

Q. Now, it is stipulated in this case that it was organized in November, 1878, Mr. Hood, and I assume that is the correct date.

A. Yes—I was trying to think when in the 70's it was. It was some time in the 70's—I remember that.

Q. I am stating that to refresh your recollection.

A. Yes, it was in the 70's—I remember that. There was a Contract and Finance Company that did work.

Q. What was the name of that company?

A. Contract & Finance Company.

Q. Oh, that is the corporate name?

A. Yes, Contract and Finance Company. And there was at one time a Southern Development Company, but I think that was subsequent to 1878. And there was a Western Development Company. My impressions are that the Western Development Company was just prior to the Pacific Improvement Company.

Q. Well, didn't the Pacific Improvement Company in effect succeed the Western Development Company?

A. That is my remembrance, without any specific knowledge. That is my impression.

Q. Now, in a general way, Mr. Hood, these various contracting companies were controlled by the same general interests, were they not?

A. Well, I cannot testify in any general way. I can testify only that I had relations of the kind I have described with the officers of the railroad company and with the officers of the sundry construction companies. I consider them as contractors.

Q. Yes, but there was some relation between the construction companies and the railroad companies?

A. I had no knowledge whatever of that kind, any more than any contractor.

Q. Well, was it not a matter of common history that those companies were companies controlled by Huntington, Crocker, Stanford and Hopkins?

A. No, nothing but hearsay—nothing but common talk. It was common talk. I knew nothing about it.

Q. That was the common talk, was it not?

A. Common newspaper talk.

Q. Did you ever see it denied?

A. I don't remember. Quite willing to testify to anything I know.

Q. I understand; but I think you are unduly conscientious about it. I think that your knowledge is sufficient to enable you to testify to some of the facts that I have asked you, and you are reluctant because you are too conscientious about it.

A. Not at all. I would be very glad to testify to anything that I know, but I am unwilling to testify to something that I never had any means of proving.

Q. Well, in your dealings with these various contracting companies, did you not learn who were the controlling factors of the company?

A. Ordinary talk—no specific knowledge. I knew only the officers of the contracting companies.

Q. State whether or not the contracts made with these other construction companies were carried on in the same general way as the contracts that were made with the Pacific Improvement Company.

A. I had no specific knowledge of the contracts until the time that we now have in hand; that is, the construction of the Central Pacific Railroad or California and Oregon Railroad. That was the first time that I was chief engineer of the Railroad Company and had to handle the contracting company. That is the first

contract that I ever say. I have seen anything there was subsequent to that time, but never anything before. Previous to that time I was assistant chief engineer of the Central Pacific Railroad or Railway, which ever it might have been from time to time, and of the Southern Pacific Railroad of the sundry states and territories, actively in charge of work wherever work was going on the fastest, but not in charge of certificates as to what contractors had done.

Q. Well, now, in your entire experience from May 3, 1867, with these different companies that you have mentioned, did you ever know of an instance where the railroad company itself constructed the railroad, that is, without contract, you understand?

A. Well, a good many instances recently.

Q. Well, I will limit the question, then, to the year 1901?

A. I think that in some instances the Pacific Improvement Company did not have a contract, where they constructed the roads, but were paid cost and per cent; I think that was the case; but in general in years back the roads were built by contract with a construction company. It is impossible for me to be specific.

Q. I understand. Now, did the Central Pacific Railroad Company have any construction equipment? Did it own any construction equipment, other than the limited amount always carried by a railroad for the purposes of its repairs?

A. I don't know of any.

Q. And is that true of the other railroad companies with which you have been connected?

A. That is in general true, yes. It is true today where we let contracts to individuals.

REDIRECT EXAMINATION.

Q. Isn't it true, Mr. Hood, that nearly all construction today that is undertaken by railroad companies, is let to contractors, whether organized as corporations or as firms, or partnerships, or individuals; the railroad company protecting itself by written contracts and supervision, inspection, and approval of its chief engineer?

A. Almost universally true, so nearly so as to be stated as universally true.

RECROSS EXAMINATION.

Q. Is it usual for the railroad company to enter into its construction contracts with a corporation controlled and owned by a part of the stockholders and officers of the railroad company itself?

A. I have no information that I could testify on in that particular.

Q. Now, Mr. Hood—Mr. Huntington, Mr. Crocker, Mr. Stanford, and Mr. Hopkins were influential in the affairs of the Southern Pacific Railroad Company, the Central Pacific Railroad Company and these other companies that you have mentioned, were they not, down to the year 1901?

A. I knew them as officers of those companies—

officers and directors.

Q. And you knew that they were influential in the management of the affairs of those corporations, did you not?

A. I so considered them.

Q. Now, did you not also know that they were influential in the affairs of the Pacific Improvement Company?

A. No knowledge of it definitely.

Q. Have you knowledge of it indefinitely?

A. I have no means of adding to my previous testimony on that subject.

Q. You dealt with the Pacific Improvement Company from 1878 until 1901, did you not, at various times?

A. Up to the time that I was chief engineer of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, and also the Southern Pacific Company, whenever I had any relations with the Pacific Improvement Company they paid my salary and I was working for them.

Q. Who employed you?

A. The Pacific Improvement Company.

Q. What individual?

A. According to contract. You will notice the contract provides for the payment by the Pacific Improvement Company of engineering salaries, except of

the chief engineer, and I was not the chief engineer.

Q. But what individual employed you for the Pacific Improvement Company?

A. The chief engineer of the railroad companies, as, for instance, myself after I became chief engineer, employed all the engineers, in the way of engaging them, that the Pacific Improvement Company paid the salaries and expenses of.

Q. Well, then, the relations between the Pacific Improvement Company and the railroad company were so intimate that the railroad company actually designated the employees of the Pacific Improvement Company?

A. The Pacific Improvement Company had no power to employ engineers pertaining to these constructions, except those engineers were approved by the chief engineer of the railroad company. This was to enable the chief engineer of the railroad company to suitably protect the interests of the railroad company.

Q. Well, now, will you please examine Exhibit 1 attached to the answer, and tell me where the provision is to authorize the railroad company to designate the engineers that shall be employed by the Pacific Improvement Company?

A. The second clause on page 88: "Second. That the said Pacific Improvement Company, shall furnish and pay for all the engineer service necessary or requisite for the location and construction of said railroad and its appurtenances, such location and construction to be

subject to the approval of the President or Chief Engineer of said Central Pacific Railroad Company, who may direct such changes to be made as they may deem proper; but, the salary of the Chief Engineer shall be paid by the said Central Pacific Railroad Company."

Q. Well, now, where is there anything in there that authorized the officers of the railroad company to designate the engineers that should be employed by the Pacific Improvement Company?

A. The fact that the location and construction of the railroad was to be subject to the approval of the President or Chief Engineer of the railroad company, and that approval was in fact delegated to the Chief Engineer, practically, implied that the engineering force should be to his satisfaction, and was always so construed, and was always so practically carried on.

Q. Well, this provision authorized the chief engineer of the railroad company to change the route of road as surveyed by the engineers of the Pacific Improvement Company?

A. Which meant that he could order the engineers of the Pacific Improvement Company to do anything he chose.

Q. Does that mean that the railroad company could designate the employees of the Pacific Improvement Company?

A. Absolutely; and they did so.

Q. So that the Pacific Improvement Company was

entering into a contract with the railroad company to build the road for a certain specified price, and they had no means of knowing where the road would be located, or what would be the actual cost of construction?

A. Other than such information as might be given them by the chief engineer.

Q. Well, where is there anything in this contract that designates the location of the road?

A. I don't know of any place.

Q. Well, can you explain what relation existed between the Pacific Improvement Company and the Central Pacific Railroad Company that would induce the Pacific Improvement Company to construct a road of over 180 miles in length, or of over 100 miles in length, for a certain specified price, and leave it to the railroad company to afterwards determine where the railroad should be located, and how it should be constructed?

A. It was known, as it is always known, very closely where the railroad was going to be built. The terms of the act of the land grant, if I remember rightly, practically specified a general route in the way of where the railroad should go, up the Sacramento River, etc. And today, if we were to let a contract to an individual or a contracting firm, as is not unprecedented in railroad work, that they should build a certain distance of railroad for, for instance, a certain lump sum of money, we should unquestionably insist, even where they paid as a part of their work the salaries and expenses of the engineers

on location and construction, that those engineers should be exclusively, in all essential matters, under the orders of the chief engineer of the railroad, and their personnel should be subject to his approval. We would not let a contract any other way to John Smith at this minute, under any circumstances, if we wished to protect the interests of the railroad company.

Q. I want to ask this witness, as a practical engineer, if he ever knew of a contract between strangers —I mean, where the contracting parties had no other relations—in which the contractor agreed to build a railroad between certain specified points for a certain lump sum, and leave to the railroad company the right to designate the location of the road afterwards?

A. The location of the road is generally approximately designated in advance, or no contractor or firm would make such a proposition.

Q. Don't the contracts provide expressly where the survey shall be, and don't the ordinary railroad construction contracts include profile maps and everything, showing the amount of grading, and the amount of tunneling, and all other general features of the proposed line of railroad?

A. Always subject to change.

Q. Certainly. But when they are subject to change, do they not always provide for a proportionate compensation to the contracting party?

A. Generally by the cubic yard, or lineal foot, or

other function.

Q. But in this instance the Pacific Improvement Company agreed to take 80,000 shares of the capital stock of the Central Pacific Railroad Company, and $4,500,000 of its bonds, and construct a railroad from Delta to the State line, upon such route as the railroad company might thereafter designate?

A. Unquestionably, except as generally outlined in the contract. But I am not clear as to the drift of your question. Is it that they made a bad trade?

Q. No, it is because the Pacific Improvement Company, and the Central Pacific, and the Southern Pacific were one concern, and it didn't make any difference to them what the terms were?

A. I know nothing about that.

A. I know nothing about the relations of the companies, other than as shown in the contract.

REDIRECT EXAMINATION.

Q. This is a land grant road that was under construction, and it had to be constructed on a line of definite location, did it not, under the requirements?

A. General route.

Q. Yes, under the requirements of the Act of Congress; and the first paragraph of Exhibit No. 1, page 87 of the printed answer of the defendants, uses this language: "That the said Pacific Improvement Company shall in a good workmanlike manner construct,

finish, furnish and complete the railroad and telegraph line of the said Central Pacific Railroad Company, commencing at a point near the said town of Delta and running thence in a general northerly direction by the most practicable route to a point on the Southern boundary line of Oregon, there to connect with the road of the said Oregon and California Company a distance of one hundred and four miles, as near as may be, together with the rolling stock, buildings, instruments, and fixtures thereof," etc.

A. Yes.

Q. Now, that was the line upon which that railroad was proposed to be constructed, was it not?

A. Yes, sir.

Q. And at that time the Central Pacific Railroad Company, as you have testified, had already proceeded with considerable construction prior to the date of that agreement?

A. Yes, sir.

Mr. Townsend: This witness has said the Pacific Improvement Company did—the Pacific Improvement Company paid the bills?

A. Paid the bills.

Mr. Townsend: Well, the Pacific Improvement Company did the work, did they not?

A. Not of necessity; they might have been agents of the Central Pacific.

Q. The Central Pacific Railroad Company had

theretofore located this line, and had done some general construction along between Delta and the State line, as you have heretofore testified?

A. Yes, sir.

Q. But the bills for that work were either paid by the Pacific Improvement Company, excepting your own salary, or thereafter assumed?

A. Yes, sir; that was my understanding of it.

Q. The map of definite location of this line had been filed in the General Land Office as early as 1871, had it not?

A. Very early, before I had anything to do with it.

Q. And the road today is, substantially, constructed and operated where it was originally located?

A. Yes, sir, where it was originally filed.

Q. Yes, that is what I mean. So that, as a practical proposition, any contractor could, in advance of making his contract, ascertain substantially where the road was to be built, and its probable cost?

A. He could form an idea of the practicable final location of the road and its probable cost.

RECROSS EXAMINATION.

Q. Well, now, Mr. Hood, I don't want to have an extended argument with you about this, but there are many ways of building a railroad from Delta to the Northern boundary line of the State, along the identical

route designated by the maps filed by the railroad company? Were there not?

A. You mean—

Q. I mean as to grades and curves?

A. You mean whether it would hit a point harder, or less, and so on?

Q. I mean, there could be many different plans of constructing it over that identical route?

A. In detail, yes.

Q. As to grades, and curves, and other detail?

A. Yes.

Q. And the ascertainment of those details would be essential to approximate the probable cost of construction, would it not?

A. Except in this way; that it was specified and understood that it should be located in a practicable and commonsense manner.

Q. Yes, but, for instance, it might cost twice as much to construct a railroad between those two points which at no place should have more than a two per cent grade than to construct one which might have four per cent grades?

A. It might cost a great deal more, yes.

Q. And those details are essential to know in order to approximate or estimate the probable cost of construction?

A. It might differ very materially with the grade system.

Whereupon, the witness, upon cross examination, further testified that he has no data of any kind and there is no record existing, by which he would know, or by reference to which he could approximate the cost of construction of the railroad from Delta to Ashland. He saw the contract of October 11, 1886, identified as Exhibit 1 of the answer, in executed form, at about that time. He drew the conclusion from the contract that he was to build the road properly and to his satisfaction, and to certify to its having been so completed from time to time, and he acted accordingly. He has no rememberance or knowledge that there may have been some other contract that succeeded the contract of October 11, 1886, which determined the price to be paid, and the other details of the transaction. He only recollects this one contract, and he supposes that the railroad was constructed by the Pacific Improvement Company for the Central Pacific Railroad Company pursuant to this contract, which is the only one that came to his attention. He acted according to that contract, certified the distances constructed, and saw that the road was built right. It was the custom to certify as to the completion of the road in sections, and he refers to the specification in the contract to that effect. He would say that that was the general provision that he referred to, and that his recollection is that he certified to the completion of the road in sections, as provided by this contract. He could not change his previous testimony, which was to

the effect that, physically, he went right on and built the road in Oregon, and certified to its completion, and whether it was under this contract or another contract, he could not possibly tell.

Whereupon, upon redirect examination, the witness was shown an official volume, published by authority of the State of California, called the "Seventh Annual Report of the Board of Railroad Commissioners of the State of California, for the year ending December 31, 1886." Whereupon, there being no objection to the introduction of the portion of said volume hereinafter set out, the defendants offered in evidence the official report of the Central Pacific Railroad Company for the year ending December 31, 1885, printed therein, and the same was received in evidence and read into the record as follows:

TABLE OF CONTENTS

	Page
Statement of the Evidence	1551
Stipulation as to the Facts	1552
Subdivision I of Complainant's Bill of Complaint	1552
Subdivision II.	1553
Subdivision III.	1553
Subdivision IV.	1559
Subdivision V.	1560
Subdivision VI.	1562
Subdivision VII.	1566
Subdivision VIII.	1577
Subdivision IX.	1580
Subdivision X.	1582
Subdivision XI.	1583
Subdivision XII.	1584
Subdivision XIII.	1584
Subdivision XIV.	1585
Subdivision XV.	1585

Page

Subdivision XVI. 1586

Subdivision XVII. 1586

Subdivision XVIII. 1587

Subdivision XIX. 1588

Subdivision XX. 1589

Subdivision XXI. 1590

Reports made of the Transactions of the Land Department of the Defendant Oregon and California Railroad Co., upon blanks formulated and furnished thereof by the Bureau of the Interior Department by Half Years—

For the Half Year ending Dec. 31, 1879 1595

For the Half Year ending June 30, 1880 1595

For the Half Year ending Dec. 31, 1880 1596

For the Half Year ending June 30, 1881 1596

For the Half Year ending Dec. 31, 1881 1597

For the Half Year ending June 30, 1882 1597

For the Half Year ending Dec. 31, 1882 1598

For the Half Year ending June 30, 1883 1598

For the Year ending June 30, 1884 1599

For the Year ending June 30, 1885 1599

	Page
For the Half Year ending Dec. 31, 1885	1600
For the Year ending Dec. 31, 1885	1600
For the Half Year ending June 30, 1886	1601
For the Half Year ending Dec. 31, 1886	1601
For the year ending Dec. 31, 1886	1602
For the Half Year ending June 30, 1887	1602
For the Half Year ending Dec. 31, 1887	1603
For the Year ending Dec. 31, 1887	1603
For the Year ending Dec. 31, 1888	1604
For the Year ending June 30, 1889	1604
For the Year ending June 30, 1890	1605
For the Year ending June 30, 1891	1605
For the Year ending June 30, 1892	1606
For the Year ending June 30, 1893	1606
For the Year ending June 30, 1894	1607
For the Year ending June 30, 1895	1607
For the Year ending June 30, 1896	1608
For the Year ending June 30, 1897	1608
For the Year ending June 30, 1898	1609
For the Year ending June 30, 1899	1609

Page

For the Year ending June 30, 1900 1610

For the Year ending June 30, 1901 1610

For the Year ending June 30, 1902 1611

For the Year ending June 30, 1903 1611

Subdivision XXII. 1623

Subdivision XXIII. 1624

Exhibit No. 1 to Stipulation 1625

Exhibit No. 2 to Stipulation 1629

Exhibit No. 3 to Stipulation 1630

Exhibit No. 4 to Stipulation 1633

Exhibit No. 5 to Stipulation 1640

Exhibit No. 6 to Stipulation 1652

Exhibit No. 7 to Stipulation 1663

Exhibit No. 8 to Stipulation 1678

Exhibit No. 9 to Stipulation 1689

Exhibit No. 10 to Stipulation 1697

Exhibit No. 11 to Stipulation 1702

Exhibit No. 12 to Stipulation 1710

Exhibit No. 13 to Stipulation 1718

Page

Exhibit No. 14 to Stipulation 1717

Exhibit No. 15 to Stipulation 1721

Exhibit No. 16 to Stipulation 1725

Exhibit No. 17 to Stipulation 1730

Evidence 1732

Testimony for Complainant 1732

W. W. Cotton 1732

L. F. Steel 1735

Joseph Gaston 1737

Testimony for Defendants 1820

B. A. McAllaster 1820

Wm. Hood 2049

Report of Special Committee of Oregon Legislature of 1866 1821

Stipulation as to Oregon Senate and House Journals for 1868 1844

Index for the entire Transcript will be found in back of last volume together with Errata sheet.